TRANSCRIPT OF RECORD

(7)

Supreme Court of the United States

OCTOBER TERM, 1954

No. 97

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, ET AL., PETITIONERS,

vs.

ANHEUSER-BUSCH, INC.

WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

PETITION FOR CERTIORARI FILED MAY 26, 1954

CERTIORARI GRANTED OCTOBER 14, 1954

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State of Missouri, } ss.
City of St. Louis. }

IN THE

Circuit Court, City of St. Louis, State of Missouri.

ANHEUSER-BUSCH, INC., a Corporation,

Plaintiff,

vs.

LLOYD WEBER, RUSSELL L. DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the International Association of Machinists, District No. 9,

Defendants.

No. 54704-D.

TRANSCRIPT OF THE RECORD.

THE PLEADINGS.

This cause was instituted by the filing of a petition for injunction on April 19, 1952, in which Anheuser-Busch, Inc., was plaintiff, and Lloyd Weber, Russell L. Davis, Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, individually and as representatives of the International Association of Machinists, District No. 9, were defendants.

On April 30, 1952, said petition was amended by insertion and interlineation and is, in words and figures, as follows, to-wit (caption and signatures of counsel omitted):

PETITION FOR INJUNCTION.

Comes now the plaintiff and for its cause of action states:

1. Plaintiff is and at all times hereinafter mentioned was a corporation duly organized and existing under the laws of the State of Missouri with its principal place of business at 721 Pestalozzi Street, St. Louis, Missouri. Plaintiff is engaged in the business of manufacturing and selling beer, yeast, corn products and other commodities. In connection with the operation of its business, plaintiff purchases from others large quantities of raw materials and supplies which are delivered by common carriers and private carriers and otherwise, to its plants, including its main plant located at and adjacent to its said principal place of business. In distributing its manufactured products to its customers plaintiff makes shipment by common carriers, private carriers, its own trucks and otherwise. Also in effecting distribution of beer manufactured by it, plaintiff warehouses said product in package form in public warehouses, independently owned and operated, situated in the City of St. Louis, Missouri, and elsewhere. Also in effecting distribution of beer manufactured by it, plaintiff sells product to dealers or wholesalers whose principal places of business are situated in areas other than St. Louis, Missouri. Deliveries pursuant to such sales are made from its main plant and said public warehouses hereinabove referred to by common carriers, private carriers and to said dealers or wholesalers directly. Plaintiff employs at its main plant approximately 6,000 persons.

2. Defendant Lloyd Weber is the business representative and Defendant Russell L. Davis is the Business Agent, of

the International Association of Machinists, District No. 9. Defendants, Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer and Thomas Mulvaney, are members of the negotiating committee of said District No. 9. Membership in said unincorporated labor organization is so numerous that it is impractical to name all members thereof as defendants herein. The defendants named, however, are sufficient to assure adequate representation of the entire class of persons who are members of and known as the International Association of Machinists, District No. 9, hereinafter at times referred to as the "Machinists". A common question of law and fact exists with respect to the named defendants and the class represented by them known as District No. 9, which question arises out of the protection of the rights of plaintiff concerning which relief is herein sought.

3. For a number of years there has existed in the St. Louis area an unresolved jurisdictional dispute between the Millwrights, affiliated with the Building & Construction Trades Council, and the Machinists, who are not members of the Building & Construction Trades Council. This dispute is manifested by recurring demands made on general construction contractors by the Millwrights and by the Machinists that the disputed work be given exclusively to members of their respective organizations, and by picketing of jobs by the labor organization whose members were not given the work. The result of such picketing is that trades allied with the Building & Construction Trades Council refuse to cross a picket line established by the Council and certain other trades refuse to cross a picket line of the Machinists.

4. Plaintiff has in its employ building trades workers whose unions are members of the Building & Construction Trades Council and has collective bargaining agreements with such unions covering these employees.

5. The plaintiff has for several years recognized the said District 9, Machinists, as bargaining agent for a certain group of its employees. Plaintiff has negotiated with said Machinists several collective bargaining agreements covering such employees. The last such collective bargaining agreement expired December 31, 1951. Article VII of said collective bargaining agreement read as follows:

Article VII.

Section 1: Jurisdiction: The Employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing, and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed by employees within the bargaining unit as set forth in Section 1 of Article 1 of this agreement, either under its own supervision or such other supervision as the employer shall select.

Section 2: In the event it becomes necessary to have such work hereinbefore described contracted out, the Employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations.

The said Machinists, through words and conduct, have indicated that they intend, by Section 2 of Article VII above quoted, to require plaintiff to insert in any and all contracts with outside organizations for construction and reconstruction work on its premises, a provision that the work of installing, erecting and moving machinery—the items which are the subject of the jurisdictional dispute between the Machinists and the Millwrights—shall be per-

formed exclusively by the Machinists, and to refuse to deal with any general contractor who will not consent to the insertion of such a provision in his contract. The Machinists, further, through words and conduct, have indicated that they will insist that like action be taken by the other breweries in the St. Louis area, all for the purpose of compelling general contractors to require the use of Machinists in installing, erecting and moving machinery, at the peril of receiving no business from the breweries if they fail to accede to the Machinists' demand. Plaintiff states that if it accedes to the demands of the Machinists and inserts the clause in its contract with the Machinists, its plant will be picketed by the Millwrights, and Teamsters and Bottlers Union will refuse to cross the picket line.

6. Negotiations between the plaintiff and the Machinists for a new 1952 contract began on December 19, 1951. Said negotiations included the proposal by the Machinists of certain new clauses and the request by the Company for the elimination of Section 2 of said Article VII. The Machinists indicated their unwillingness to permit such change of the contract and requested the appointment of a Federal Conciliator to assist in subsequent negotiations between the parties. From the period, January 9, 1952, to March 31, 1952, a number of meetings were held. During said meetings, and, in particular, at the conclusion of the last meeting of March 31, 1952, the Machinists indicated that they would never consent to a change in or elimination of said Article VII, Section 2, or any modification which did not require plaintiff in contracting out work in the nature described in said Section 1, to use only contractors which had contracts with the Machinists. The Machinists stated at said last meeting that their position in this respect would remain unaltered and that they would go out on strike and set up a picket line which would be continued until the plaintiff agreed to the inclu-

sion of the provision in the forthcoming contract requiring plaintiff, in contracting out work of the nature described in said Section 1, to use only contractors which had contracts with the Machinists.

7. On April 7, 1952, the Machinists did, in fact, go on strike and placed a picket line around the premises of the plaintiff. Said Machinists have so remained on strike and have maintained said picket line to the time of the filing of this petition. Organized employees of the plaintiff, with the exception of certain of the maintenance men, to the number of about 250, refused to cross this picket line, from April 7, 1952, to and including April 17, 1952, with the result that plaintiff was unable to obtain a sufficient production work force to maintain its operations and was forced to close down.

8. Plaintiff further states that since the Machinists' strike at plaintiff's plant, Griesedieck Western Brewery Company, operators of plants in Belleville, Illinois, and St. Louis, Missouri, signed a contract with the Machinists covering its Belleville plant containing the clause demanded by the Machinists, and thereupon its St. Louis plant was picketed by the Building Trades and the operation of said brewery was thus and thereby impaired.

9. The strike of said Machinists and the picket line being maintained by them are for the purpose of compelling the plaintiff to agree not to deal with contractors, doing the work described in said Section 1, until such contractors have accepted the Machinists' bargaining agent for their employees, and, therefore, constitutes, as to plaintiff, a secondary boycott and is in violation of Section 8 (b) (4) (A) and (B) of the National Labor Relations Act, as amended, and Section 303 (a) (1) and (2) of the Labor Management Relations Act 1947, and it is an attempt by the Machinists, using coercion on plaintiff, to illegally establish the Machinists as the bargaining representative for other employees of other employers for whom

the said Machinists have not been certified as bargaining representatives by the National Labor Relations Board; and also an attempt to coerce other employers beyond the control of the plaintiff to award such work to said Machinists and to unlawfully extend the bargaining rights of said Machinists.

10. Said strike of the Machinists and said picket line are for the parpose of requiring contractors, doing the work described in said Section 1 for the plaintiff, to assign such work to the Machinists and, therefore, constitutes a jurisdictional dispute and is in violation of Section 8 (b) (4) (D) of the National Labor Relations Act, as amended, and Section 303 (a) (4) of the Labor Management Relations Act 1947.

11. Plaintiff further states that in the proper conduct of its business it has in the past and will in the future be required to improve and expand its plant and structures by adding new buildings thereto and by the reconstruction and remodeling of existing structures, all of which work is vitally necessary to the continuing operation of its business; and that the jurisdictional dispute between said Machinists and the said Millwrights hereinbefore referred to will continue to exist in the event plaintiff is required to reinsert said paragraph 2 into another contract with said Machinists, and it will thereby cause the plaintiff to entail further work-stoppages and irreparable losses as aforesaid.

12. Commencing on March 31, 1952, as aforesaid, and continuing to the date hereof, defendants and the members of the class represented by them did individually conspire, connive and unlawfully agree among themselves for the purpose of continuing the said unlawful strike and picket line, and did cause persons to picket various entries of the plaintiff's main plant. By virtue of the presence of said pickets, employees of plaintiff represented by other labor organizations than that herein concerned have on

occasions refused to report for work and employees of third parties organized by other labor organizations have refused and are continuing to refuse to bring materials in or to take materials out of plaintiff's plant.

13. Commencing on March 31, 1952, as aforesaid, and continuing to the date hereof, defendants and the members of the class represented by them did individually conspire, connive and unlawfully agree among themselves to conduct said unlawful strike and to maintain said unlawful picket lines at plaintiff's brewery and the various supply warehouses leased by plaintiff, and at the same time to refrain from picketing the breweries of plaintiff's competitors similarly situated, thereby causing loss of customers and business, and loss of valuable competitive position difficult to regain, and thereby to coerce plaintiff's capitulation.

14. Commencing on the morning of April 18, 1952, pickets, acting in concert and on behalf of said Machinists, interfered with and effectively obstructed the delivery of coal and other commodities to and from the premises of plaintiff, and by unlawfully picketing did cause employees of the Manufacturers Railway Company and the Keightley Brothers Coal and Coke Co. to refuse to move or deliver products vitally necessary to the operation of plaintiff's business, and said Railway Company and said Coal Company did thereby refuse to deal with plaintiff.

15. Said conduct and activity referred to in said Paragraph 14 constitutes a secondary boycott under the common law of the State of Missouri, and, in addition, is in violation of Section 8 (b) (4) (A) of the National Labor Relations Act, as amended, and Section 303 (a) (1) of the Labor Management Relations Act, 1947.

15a. That said conduct and the activities of the defendants, mentioned herein, are and were in furtherance of an unlawful conspiracy, agreement, combination, confederation, or understanding between themselves in restraint of trade, or competition, in the importation, transporta-

tion, manufacture, purchase or sale of products and commodities in this State, and of articles bought and sold in connection therewith, and the defendants individually, and as a class, are guilty of a conspiracy in restraint of trade, and are guilty of a conspiracy in restraint of trade in violation of the Laws of the State of Missouri, and particularly in violation of Section 416.010, R. S. Mo. 1949, and said defendants, individually, and as a class, have unlawfully conspired, as aforesaid, for the purpose of compelling plaintiff to agree not to deal with independent construction contractors unless and until said contractors have accepted defendants as bargaining agent for their employees; and that the picketing by defendants is carried on pursuant to, and as, one of the illegal, coercive acts of such conspiracy; having as one of its purposes an illegal restraint of trade, as aforesaid, for the purpose of compelling plaintiff to become a party to an agreement, which is in violation of the common law of the State of Missouri, and which has, as its purpose, an illegal restraint of trade under the Missouri Conspiracy Statutes; and that plaintiff, by acceding to defendants' demands, will be acting in conspiracy and concert with defendants in violation of said laws of Missouri, thereby subjecting plaintiff to legal liability under such laws.

16. Plaintiff further states that in the conduct of its business it is necessary at all times to have yeasts, corn products and beer in various stages of processing, and that such processing once started must be continued to completion. By reason of the illegal strike and picketing aforesaid, plaintiff has been prevented from completing its normal manufacturing processes heretofore begun, and is suffering irreparable damage through the progressive spoilage of the partly processed food products.

17. Each of said unlawful and illegal acts referred to in said paragraphs 7, 9, 10, 12, 13, 14, 15, 15a and 16 has injured the plaintiff in that it is unable to operate its

manufacturing facilities and to distribute and merchandise its manufactured products.

18. Plaintiff is without adequate remedy at law and is suffering and will continue to suffer irreparable damage by the acts and course of conduct of the defendants as aforesaid and those they represent and others who have unlawfully agreed, combined, conspired and confederated with them. Suits at law, if brought, will be numerous, and owing to delay and lack of financial responsibility on the part of defendants would not result in plaintiff's obtaining any substantial relief.

19. The exigencies of the situation make it impossible for notice to be given to defendants of an application for a restraining order of the nature prayed for herein, because the acts sought to be restrained are continuing, and the delays incident to a notice and hearing would increase the damage and injury to plaintiff.

Wherefore, the premises considered, plaintiff prays that this Court by its injunction and injunctive order herein permanently enjoin defendants and each of them, in their individual and representative capacity, members of the class represented by them, together with all other persons acting in their behalf and at their behest and in concert with them from:

(a) Conspiring, conniving and unlawfully agreeing to participate in and continue the illegal strike and picketing hereinabove described.

(b) In concert and as a class effecting and participating in and continuing the illegal strike and picketing hereinabove described.

(c) Picketing or otherwise interfering with or restricting passage on or over the various streets and roadways, and the railroad tracks, so as to affect or interfere with, or otherwise affecting or interfering with, the delivery of materials, goods and products to and from plaintiff's premises.

(d) Picketing, setting up a picket line or lines, or maintaining a picket line or lines, on or about any of the premises of plaintiff, or any premises where plaintiff stores or warehouses beer or other products, or does business in connection therewith.

And that during the interim pending final determination of this cause, this Court issue a temporary injunction to the same effect; and pending the issuance of said temporary injunction plaintiff be granted a restraining order of this Court issued to the same effect; and for such further and additional relief as to this Court may seem just and proper under all the circumstances of the case.

And on the same day, to-wit, April 30, 1952, defendants filed their petition for removal of this cause to the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, said petition was allowed and on June 10, 1952 said cause was remanded to the Circuit Court.

On June 10, 1952, defendants filed their separate motion to dismiss for want of jurisdiction and failure to state a cause of action, their return to the order to show cause, and their separate answer, in words and figures, as follows, to-wit (caption and signature of counsel omitted):

SEPARATE MOTION OF DEFENDANTS TO DISMISS FOR WANT OF JURISDICTION AND FAILURE TO STATE A CAUSE OF ACTION, SEPARATE RETURN TO THE ORDER TO SHOW CAUSE AND SEPARATE ANSWER OF DEFENDANTS.

Separate Motion of Defendants to Dismiss for Want of Jurisdiction and Failure to State a Cause of Action.

Come now the defendants herein and respectfully move this Court to dismiss plaintiff's petition and for reasons therefor state:

1. Plaintiff's petition shows on its face that plaintiff seeks the injunctive process and relief of this Court by reason of the alleged violation by these defendants of certain provisions and sections of the National Labor Relations Act—hereinafter referred to as the N. L. R. A., to-wit:

> Section 8 (b) 4 A & B, as amended, and Section 303 (a) 1 and 2 of the Labor-Management Relations Act of 1947, hereinafter referred to as the L. M. R. A. —all as set forth in paragraph 9 of said petition.
>
> Section 8 (b) 4 D of the N. L. R. A., and, Section 303 (a) 4 of the L. M. R. A., of 1947—all as set forth in paragraph 10 of said petition.
>
> Section 8 (b) 4 A of the N. L. R. A., and Section 303 (a) 1 of the L. M. R. A., of 1947—all as set forth in paragraph 15 of said petition.

2. That exclusive jurisdiction to hear and determine the matters and things as hereinbefore set out has been pre-empted by the National Labor Relations Board under and by virtue of Section 10 (a) of the N. L. R. A., and that specific remedy is provided for by Section 10 (k) and (1) of said Act; that remedy for violation of Section 303 (a) of the L. M. R. A., is provided for in Section 303 (b) of the said Act and none other.

3. That by reason of the foregoing this Court is wholly and totally lacking in jurisdiction to hear and determine any and all matters as set forth in plaintiff's petition.

4. That plaintiff has failed to state a cause of action in law or in equity under the statutes or the common law of the State of Missouri, and therefore is not entitled to any relief by this Court.

Wherefore, the premises considered, these defendants pray that plaintiff's petition be dismissed.

Return to Order to Show Cause and Answer of Defendants.

Come now the defendants and for their return to the order to show cause heretofore issued by this Court on April 21, 1952, and for answer to plaintiff's petition state:

1. That this Court has no jurisdiction to hear and determine any of the matters or things set out in plaintiff's petition and that plaintiff's petition be dismissed.

2. That plaintiff's petition fails to state facts sufficient to state a cause of action or entitle it to any relief in law or in equity.

3. Defendants admit the allegations of paragraph 1 of plaintiff's petition.

4. Defendants admit the allegations of paragraph 2 of said petition, except the last sentence thereof which defendants deny.

5. Defendants deny the allegations of paragraph 3 of plaintiff's petition.

6. Defendants are without information or knowledge to admit or deny the allegations of paragraph 4 of plaintiff's petition.

7. Defendants admit the allegations of paragraph 5 of plaintiff's petition except that defendants deny all allegations immediately following the setting out of Section VII of the contract.

8. Defendants admit the allegations in paragraph 6 of said petition to the effect that negotiations between the plaintiff and machinists began on December 19, 1951, and that said negotiations included the proposal of certain new clauses in the contract but defendants deny each and every other allegation set forth in said paragraph 6.

9. Defendants admit that on or about April 7, 1952, the machinists did go on strike and place a picket line around the premises of the plaintiff, but deny each and every other allegation in said paragraph 7 contained.

10. Defendants admit the allegation in paragraph 8 of the said petition as to the signing of a contract between the machinists and the Griesedieck-Western Brewery Company, but deny every other allegation in said paragraph contained.

11. Defendants deny the allegations in paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, of plaintiff's petition.

12. For further return to the order to show cause, and for answer to plaintiff's petition, these defendants state that the International Association of Machinists, District Council No. 9, hereinafter referred to as the Union, has for years been recognized by the plaintiff as the exclusive bargaining representative of Article I,

> **Section 1: Recognition:** All employees employed as machinists, machinists' apprentices, machinists' helpers to perform all turning, boring, fitting, filing, planing, shaping, babbitting, chipping. sawing, and mechanical repairs on gasoline, diesel and electric trucks and automobiles and the making, assembling, erecting, dismantling, and repairing of all machinery of all descriptions and parts thereof, including Pasteurizer and soaker carriers, and including machinist leadman, EXCLUDING all helpers in the bottling shop, boiler and refrigeration plant, employees engaged in the rigging and hoisting of all machinery, and structural iron work, the refrigerated cabinet division except for maintenance repair and erection of plant equipment not involving pipefitting, excluding sheet metal work, 10 gauge or lighter plant-wide, except for Pasteurizer and soaker carriers, excluding

electrical motors and general office, clericals, guards, professionals and supervisory employees as defined in Section 2 (11) of the National Labor Relations Act, as amended, and all other employees.

The Union was certified by the N. L. R. B., on the 25th day of March, 1948, as such exclusive bargaining agent for said employees.

13. That under and by virtue of said certification the Union has continuously been recognized by the plaintiff employer as such exclusive bargaining representative and that such representation has been evidenced by contracts over a long period of years by and between the plaintiff and the Union; that the last such contract was dated the 5th day of January, 1951 and was terminated by reason of due notice served by the Union on the plaintiff on the 29th day of October, 1951, under and by virtue of the terms of said contract.

14. That pursuant to said notice there was served on said plaintiff, by the Union, a list of proposed changes desired in said contract; copy of said changes is hereto attached, marked Exhibit "A," and by reference made a part hereof.

15. That the Union has since the 29th day of October, 1951, attempted to engage in collective bargaining with respect to the said proposed changes but that the plaintiff company has steadfastly refused unless and until the Union first agreed that Section 2 of Article VII of the Contract be deleted; that the Union has refused and still refuses to accede to this demand. That by reason of such demand by the plaintiff, and the refusal to bargain with the Union, the Union on or about March 24, 1952, filed Unfair Labor Practice charges against the plaintiff with the N. L. R. B., 14th Region, St. Louis, Missouri, and on or about April 18, 1952, the Union filed amended charges

against the plaintiff herein, all of which charges are presently pending before said Board and are now in the process of investigation and processing by said Board.

16. That by reason of the refusal of the plaintiff to bargain in good faith with the Union with respect to the matters and things called for in the proposed changes to the Contract as presented to the Plaintiff by the Union, and the refusal of the plaintiff to furnish and supply the Union with certain payroll information requested by the Union, the Union on April 6, 1952, by a vote of 206 to 14, decided to strike and has caused the premises of plaintiff to be picketed. That all of said picketing has been peaceful, orderly and lawful in all respects and has been without violence of any character.

17. That on or about April 8, 1952, the plaintiff herein invoked the jurisdiction of the N. L. R. B., by filing unfair labor practice charges with the N. L. R. B., 14th Region, St. Louis, Missouri, against the Union which said charges are presently pending before the said Board and are now in the process of investigation and processing by said Board.

18. That the purpose and intent of the said picketing has been to advise the public in a peaceful, orderly and dignified way that a labor dispute existed between the plaintiff and the Union. The defendants merely exercised their rights guaranteed them by the Constitution of the United States, Amendments 1, 5, 13 and 14, and the Constitution of the State of Missouri, Article 1, Section 10 and 29.

19. Defendants further state that at no time have they individually or collectively nor has the Union conspired, connived or unlawfully agreed among the employees of the Manufacturers Railway Company or themselves or with others to obstruct the delivery of coal or other com-

modities to or from the premises of plaintiff or to refuse to move or deliver products necessary to the operation of plaintiff's business other than by the maintenance of the said picket line which speaks for itself.

20. That the plaintiff has an adequate remedy at law and under the N. L. R. A., as amended, and the L. M. R. A.

21. That defendants by reason of plaintiff's petition have been caused to employ counsel and have been compelled to expend sums of money in their defense.

Wherefore, the premises considered, defendant prays that plaintiff's petition be dismissed and that they go hence with their costs and damages.

EXHIBIT A.

October 29, 1951.

Changes Proposed by District No. 9, International Association of Machinists to Become Effective January 1, 1952, With Anheuser-Busch, Incorporated, St. Louis, Missouri.

Article III—Section 1—Wages—The rate of wages for Machinists shall be $2.75 per hour; Machinists' Helpers—$2.30 per hour and for Machinist Apprentices—$1.625 per hour starting rate. For work on the second and third shifts, ten per cent (10%) additional shall be paid.

Section 2—No change.

Section 3—Machinists installing or erecting machinery shall be paid at the rate of $2.75 per hour. Leadmen shall receive $3.00 per hour and at least one (1) Leadman shall be employed on each job.

Section 4—No change.

Article X—Vacations—**Section 3** to provide that employees who have completed eight (8) years of service to be entitled to three (3) weeks' vacation with pay.

Article XV—Termination—This agreement signed this ..... day of ....., 19...., shall become effective as of January 1, 1952, and shall remain in effect for a period of one year and from year to year thereafter until either party serves a sixty (60) days' written notice on the other specifying a desire to modify or terminate this agreement.

In the event the National Wage Stabilizations Regulations shall provide for further upward limits of wage increases and/or fringe issues such as welfare, holidays, vacations, night shift premium, etc., over and beyond the present limits set under National Wage Stabilization Regulations, that, upon notice by either party to the other, this agreement may be reopened at any time prior to the regular expiration of the provision for wage and/or fringe issues as above set forth, with the strict understanding that should the agreement be reopened under the above procedure, any provisions of this agreement which prohibit the Union's right to strike shall be inoperative and the Union shall be free to strike providing all State and Federal Laws are complied with.

New Articles.

1. To provide that at least two (2) machinists shall be on each erection and construction job from the time said equipment arrives at the plant until it is completely installed.

2. Supervisory personnel shall not perform machinists' work or use machinists' tools.

3. Employees shall be permitted smoking privileges in each machine shop and in certain designated areas.

4. The Company to pay the sum of $4.85 per month for each employee for District No. 9, I. A. of M. Welfare Plan. See copy attached.

5. Employees called out or reporting for work shall receive not less than four (4) hours' pay.

TRIAL ON THE MERITS.

The issues having been joined, this cause proceeded to a trial on the merits on June 26, 1952, before the Honorable David J. Murphy, Judge, presently presiding in Division No. 2 of said Court.

Appearances:

Mark D. Eagleton, Esq., Roberts P. Elam, Esq., David Y. Campbell, Esq., for the plaintiff.

Robert A. Roessel, Esq., Keith M. Brownell, Esq., for the defendants.

Thereupon the following proceedings were had, to-wit:

Mr. Eagleton: I want to read into the record plaintiff's understanding of this matter with reference to the issues, so that it might facilitate the arguments and the thinking of the Court.

Before we start the evidence, or the arguments, and other proceedings, in this case, I wish to make a statement for the record, which may aid in clarifying the issues.

The plaintiff does not wish to be understood as in any way contending in this case that this Court has before it for consideration, decision or resolution, by this Court, a labor dispute.

There is reference in the petition to a labor dispute, and to a jurisdictional dispute between two labor unions. Those matters were, we believe, necessarily referred to in the petition, and we believe that they will necessarily also be referred to in the evidence.

The plaintiff, however, does not request any action by this Court with respect to, or with respect to resolving, those labor controversies. The plaintiff here seeks but one form of relief, to wit: An injunction, and it bases its right to that relief upon charges that the defendants, and the

labor union which they indisputably and admittedly represent, were and are guilty of common law conspiracy, conspiracy in violation of the Missouri statutes, and a secondary boycott. It is those three things, and those three things alone, upon which the plaintiff bases its right to relief, and the only relief sought is, as stated, an injunction to prevent defendants, and their union, from continuing to engage in unlawful conspiracies and secondary boycotts, and conduct in connection therewith.

Mr. Eagleton: Mark these as Plaintiff's Exhibits A, B and C, please.

(Documents marked for identification as Plaintiff's Exhibits A, B and C, respectively, by reporter, as requested.)

Mr. Eagleton: The first thing I want to offer in evidence, and then hand to the clerk, for a formal filing, is a stipulation in this case, which has reference to the fact that the evidence taken in this cause shall be accepted as evidence adduced in any proceeding with reference thereto, especially with reference to any temporary injunction, or the case on its merits. The stipulation speaks for itself.

The Court: It will be received in evidence.

Said Exhibit A, offered on behalf of plaintiff, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit (caption and signatures omitted):

PLAINTIFF'S EXHIBIT A.

STIPULATION.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, by their counsel, as follows:

1. That the hearing on the order to show cause why a temporary injunction should not be granted in this case, which hearing will begin on June 26, 1952, shall be taken

and considered in all respects as the hearing both on the order to show cause why a temporary injunction should not be issued, and on the merits of this cause.

2. That the evidence adduced and the other proceedings, at the hearing on the order to show cause why a temporary injunction should not be granted in this case, which hearing will begin on June 26, 1952, shall be taken and considered in all respects as the evidence and the proceedings on the merits of this cause.

3. That, at the conclusion of the hearing on the order to show cause why a temporary injunction should not be granted in this case, which hearing will begin on June 26, 1952, this cause may be taken and considered as submitted both on the order to show cause why a temporary injunction should not be granted in this case, and on the merits of this cause, upon the evidence and proceedings at said hearing.

Dated this 26th day of June, 1952.

Mr. Eagleton: The next thing I want to offer in evidence is a stipulation as to facts, signed by the parties, and it has been marked as Plaintiff's Exhibit B. It is a stipulation of those facts upon which we agree.

The Court: It will be received in evidence.

Said Exhibit B, offered on behalf of plaintiff, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit (caption and signatures omitted):

PLAINTIFF'S EXHIBIT B.

STIPULATION AS TO FACTS.

It is hereby stipulated and agreed by and between the parties above by their counsel, as follows:

1. Plaintiff is and at all times hereinafter mentioned was a corporation duly organized and existing under the laws

of the State of Missouri with its principal place of business at 721 Pestalozzi Street, St. Louis, Missouri. Plaintiff is engaged in the business of manufacturing and selling beer, yeast, corn products and other commodities. In connection with the operation of its business, plaintiff purchases from others large quantities of raw materials and supplies which are delivered by common carriers and private carriers and otherwise, to its plants, including its main plant located at and adjacent to its said principal place of business. In distributing its manufactured products to its customers plaintiff makes shipment by common carriers, private carriers, its own trucks and otherwise. Also in effecting distribution of beer manufactured by it, plaintiff warehouses said product in package form in public warehouses, independently owned and operated situated in the City of St. Louis, Missouri, and elsewhere. Also in effecting distribution of beer manufactured by it, plaintiff sells said produce to dealers or wholesalers whose principal places of business are situated in areas other than St. Louis, Missouri. Deliveries pursuant to such sales are made from its main plant and said public warehouses hereinabove referred to by common carriers, private carriers and to said dealers or wholesalers directly. Plaintiff employs at its main plant approximately 6,000 persons. Plaintiff, in the conduct of its aforesaid business, is engaged in interstate commerce.

2. Defendant Lloyd Weber is the business representative and Defendant Russell L. Davis is the Business Agent, of the International Association of Machinists, District No. 9. Defendants Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer and Thomas Mulvaney are members of the negotiating committee of said District No. 9. Membership in said unincorporated labor organization is so numerous that it is impractical to name all members thereof as defendants herein. The defendants named, however, are

sufficient to assure adequate representation of the entire class of persons who are members of and known as the International Association of Machinists, District No. 9, hereinafter at times referred to as the "Machinists", or the "Union".

3. Plaintiff has in its employ building trades workers whose unions are members of the Building and Construction Trades Council and has collective bargaining agreements with such unions covering these employees.

4. The plaintiff has for several years recognized the said District No. 9, Machinists, as bargaining agent for a certain group of its employees. Plaintiff has negotiated with said Machinists several collective bargaining agreements covering such employees. The last such collective bargaining agreement expired December 31, 1951. Article VII of said collective bargaining agreement read as follows:

Article VII.

Section 1: Jurisdiction: The Employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing, and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed by employee within the bargaining unit as set forth in Section 1 of Article I of this agreement, either under its own supervision or such other supervision as the employer shall select.

Section 2: In the event it becomes necessary to have such work hereinbefore described contracted out, the Employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which

contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations.

5. On April 7, 1952, the Machinists did, in fact, go on strike and placed a picket line around the premises of the plaintiff.

6. Since the Machinists aforesaid strike at plaintiff's plant, Griesedieck Western Brewery Company, operator of plants in Belleville, Illinois, and St. Louis, Missouri, signed a contract with the Machinists covering its Belleville Plant, which contract contained the aforesaid Section 2 of Article VII, and thereupon the St. Louis plant of said Griesedieck Western Brewery Company was picketed by the Building and Construction Trades Council for a period of several days.

7. In the proper conduct of its business, plaintiff has in the past and will in the future be required to improve its plant and structures by adding new buildings thereto and by the reconstruction and remodeling of existing structures.

8. The Union has for years been recognized by the plaintiff as the exclusive bargaining representative of plaintiff's employees at its St. Louis plant described as follows:

> "All employees employed as machinists, machinists apprentices, machinists helpers to perform all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing, and mechanical repairs on gasoline, diesel and electric trucks and automobiles and the making, assembling, erecting, dismantling, and repairing of all machinery of all descriptions and parts thereof, including Pasteurizer and soaker carriers, and including machinists leadmen, EXCLUDING all helpers in the bottling shop, boiler and refrigeration plant, employees engaged in the rigging and hoisting of all

machinery and structural iron work, the refrigerated cabinet division except for maintenance, repair and erection of plant equipment not involving pipefitting, excluding sheet metal work, 10 gauge or lighter plant-wide, except for Pasteurizer and soaker carriers, excluding electrical motors and general office, clericals, guards, professionals and supervisory employees as defined in Section 2 (11) of the National Labor Relations Act, as amended, and all other employees."

The Union was certified by the National Labor Relations Board on March 25, 1948, as exclusive bargaining agent for plaintiff's said employees.

9. Under and by virtue of said certification, the Union has continuously been recognized by plaintiff employer as such bargaining representative for said employees and such representation has been evidenced by contracts between the plaintiff and the Union. The last such contract was dated the 5th day of January, 1951, and was terminated by reason of due notice served by the Union on plaintiff on the 29th day of October, 1951, under and by virtue of the terms of said contract.

10. The Union on or about March 2., 1952, filed unfair labor practice charges against the plaintiff with the National Labor Relations Board, 14th Region, St. Louis, Missouri, and on or about April 18, 1952, the Union filed amended charges against the plaintiff herein; on or about April 8, 1952, the plaintiff herein filed unfair labor practice charges with the National Labor Relations Board, 14th Region, St. Louis, Missouri, against the Union; and said charges filed by said Union and by the plaintiff herein are still pending before the aforesaid Regional Office of said Board; that a complaint has been issued by the Regional Office of said Board with reference to the charges filed by said plaintiff company, and same is now set for hearing on June 30, 1952.

11. This stipulation may be used in evidence by either party at any trial of the above-entitled cause, for the purpose of establishing any or all of the facts hereinabove stipulated and agreed to, and any and all previous contracts between the said plaintiff and the said Machinists Union may be introduced in evidence by either party.

12. Any of the parties to this cause may, at any trial of this cause, offer evidence as to any fact, not inconsistent with the facts hereinabove stipulated and agreed to, and which may be otherwise competent and material.

Dated at St. Louis, Missouri, this 23rd day of June, 1952.

Mr. Eagleton: The other stipulation, Exhibit C, is merely as to the use of the affidavit of Mr. Richard W. Upshaw. We have a stipulation between the parties telling why and under what circumstances his affidavit can be used, and the actual introduction of the affidavits of Mr. Upshaw will come when we get to the evidence. There will be two affidavits instead of one; the portion I gave to Mr. Roessel this morning pertains, in a large matter, to contradictions of the testimony given by Mr. Russell Davis.

Mr. Roessel: You are offering the stipulation?

Mr. Eagleton: Just the stipulation at this time, not the affidavits.

The Court: Exhibit C will be received in evidence.

Said Exhibit C, offered on behalf of plaintiff, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit:

PLAINTIFF'S EXHIBIT C.

STIPULATION.

It is hereby stipulated and agreed by and between the parties that the affidavit of Richard W. Upshaw attached hereto may be introduced in evidence in lieu of his testimony with reference to the matters and things contained

and set forth in said affidavit, subject to appropriate and proper objection being made to any part thereof with reference to the materiality or relevancy or competency of said matters. It is understood and agreed between the parties that by thus permitting said affidavit or any part thereof to be so introduced in evidence the defendants do not admit the truth of the matters contained in said affidavit but are simply agreeing that if said Richard W. Upshaw were present he would so testify, and therefore the defendants shall be permitted to offer in evidence any other testimony they may so desire in contradiction of said affidavit or in rebuttal thereto or in explanation thereof.

Thereupon counsel presented oral arguments to the Court.

PLAINTIFF'S EVIDENCE.

Thereupon the plaintiff, to sustain the matters in its petition alleged, offered and introduced the following evidence:

Mr. Eagleton: Mark these as Plaintiff's Exhibits D and E, please.

(Documents marked for identification as Plaintiff's Exhibits D and E, respectively, by reporter, as requested.)

Mr. Eagleton: At this time plaintiff wants to offer in evidence the affidavit of Mr. Richard W. Upshaw, referred to in the previous stipulation, as he is presently in New York City. It is marked Plaintiff's Exhibit D. And an extension of that affidavit, which is Plaintiff's Exhibit E. I have given Mr. Roessel copies of that heretofore. Exhibit E is merely an extension, because it came after Mr. Davis's affidavit. I am offering those as the testimony of Mr. Richard W. Upshaw, that he would so testify if he were here.

Mr. Roessel: They are subject to objections as to the relevancy, competency, and so forth.

Mr. Eagleton: Are you making any objections?

Mr. Roessel: With that understanding these may be admitted.

The Court: With what understanding?

Mr. Roessel: With the understanding they are admitted subject to the objections.

The Court: You will have to object to it and have a ruling on it.

Mr. Eagleton: It is admitted if he were present he would so testify. That goes to Exhibits D and E. The stipulation said they are subject to appropriate and proper objections with reference to competency, relevancy or materiality, if objections were made.

Mr. Roessel: I want to make the general objection at this time that it does not pertain to any matter material to the determination of this cause, it is incompetent, and further that the statements contained in the affidavit are irrelevant to any matter or fact at issue in this lawsuit.

Mr. Eagleton: His objection is to the affidavits as a whole.

The Court: That's a pretty broad objection.

Mr. Roessel: I know it is. I think after you read them you will get the idea I have in mind.

Thereupon the Court, by agreement of counsel, announced an adjournment until 9:30 o'clock A. M. of the following day, Friday, June 27, 1952, at which time Court convened and the following further proceedings were had, to-wit:

The Court: I will overrule the objection as to the affidavits. They will be received in evidence.

Mr. Roessel: I would like to make a few additional objections.

The Court: To the affidavits?

Mr. Roessel: Yes.

The Court: I anticipated that.

Mr. Roessel: I know you did. It won't change the effect of the thing a bit.

I want to make these additional objections to the affidavit of Mr. Upshaw, with particular reference to page 2, the second line, beginning at "that to his personal knowledge for a number of years prior to and subsequent to the year 1939"—then it proceeds on down and has reference to a jurisdictional dispute between the millwrights and the machinists, and that it manifested itself by recurring demands made from time to time on general construction contractors, and so forth. I want to object to that on the ground whether there was or was not one, or six, jurisdictional disputes between the millwrights and the International Association of Machinists has nothing to do with facts and issues in this case. That the issues here have to do with a dispute that existed over a contract misunderstanding, or whatever you want to call it, between this plaintiff and these defendants.

Mr. Eagleton: Does the Court want to rule on those objections one at a time?

Mr. Roessel: Go ahead.

The Court: I'll overrule the objection.

Mr. Roessel: With respect to page 3, in the first line, "that the said Machinists, further, through words and conduct have indicated that they will insist that like action be taken by other Breweries"—. Supposing they do? So what? That's a situation that is irrelevant and incompetent in this situation, what they do in other breweries.

Mr. Eagleton: It goes right to the very gravamen of the complaint, that they are trying to have the plaintiff bring pressure on the contractors and other breweries, and it is also one of the charges and allegations in the petition.

The Court: You did agree that if Mr. Upshaw were here he would so testify?

Mr. Roessel: Yes. There is no question about that.

The Court: Overrule the objection.

Mr. Roessel: On page 3, line 12, it says: "that affiant knows that in the whole St. Louis area, which includes all of the City of St. Louis and St. Louis County," there are none of the contractors here who have any working agreement with the Machinists Union. So what? We are not asking them to have working agreements with the Union. There is no competency or relevancy in that statement to the issues here.

The Court: Overruled.

Mr. Roessel: We wanted to object to that specifically.

The Court: I overruled the objection.

Mr. Roessel: On page 3, I think that this is it, it said this particular clause is an effort on the part of the defendants to have the plaintiff refuse to deal with contractors who do not have working agreement. We say that is immaterial and certainly irrelevant.

The Court: It's all the same. Overruled.

Mr. Roessel: The fourth line from the bottom, page 3, "that any strike such as that mentioned in plaintiff's petition necessarily causes plaintiff to suffer irreparable losses." I say that is an unadulterated conclusion.

Mr. Eagleton: He shows, in the prelude, he has been with the company twenty-five years and is familiar with all operations of the plant, and goes on to say that corn products, yeast and beer once started in processing will be irreparably damaged if there is a strike. It is also a statement in the petition.

Mr. Roessel: I say "irreparable" is a conclusion.

Mr. Eagleton: The word "irreparable" can be stricken as a conclusion.

The Court: Does that satisfy your objection?

Mr. Roessel: No; it doesn't.

Mr. Eagleton: It may be stricken, the word "irreparable".

The Court: I'll sustain the objection with reference to the use of the word "irreparable". The Exhibits D and E will be received in evidence.

Said Exhibit D, offered on behalf of plaintiff, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit (caption omitted):

PLAINTIFF'S EXHIBIT D.

AFFIDAVIT.

Richard W. Upshaw, being duly sworn upon his oath, doth state:

That he is and at all times hereinafter mentioned was a vice-president of the plaintiff company; that in his official capacity for said plaintiff company he is familiar with the conduct and operation of the various phases of plaintiff's business, having been with said company for more than a quarter of a century; that in his official capacity for the company he has for a number of years carried on negotiations with the International Association of Machinists, District No. 9, hereinafter at times referred to as the "Machinists" or the "Union"; that he carried on negotiations with the representatives of the defendants prior to and immediately subsequent to April 7, 1952; that he is familiar with the contracts that have been made from time to time between the plaintiff company and various Contractors in the City of St. Louis for the construction and erection of new buildings and the remodeling and repair of existing structures of the plaintiff and has represented the plaintiff company in connection with said contracts and in the controversies with Contractors or their employees in connection therewith; that to his personal knowledge for a number of years prior to and subsequent to the year 1939 and continuing down to the present time there has existed in the St. Louis area an unresolved jurisdictional dispute between the Millwrights, affiliated with the Building and Construction Trades Council, and the Machinists, who are not members of said Building and Construction Trades Council; that this dispute between said Millwrights and said Machinists is manifested by

recurring demands made from time to time on general construction Contractors by the said Millwrights and by the said Machinists that the disputed work be given exclusively to members of their respective organizations; that as a result of said dispute picketing of jobs by the labor organization whose members were not given the work has occurred on several occasions; that as a result of said picketing the plant of the plaintiff company has been shut down and the efficiency of its operation has been impaired, causing great financial loss to the plaintiff; that he is familiar with Article VII and Sections 1 and 2 thereof of the contract between plaintiff and said Machinists as set forth in the above entitled cause on page 3 of plaintiff's "Petition for Injunction"; that said Machinists through words have stated and by their conduct have indicated to affiant that by Section 2 of Article VII above referred to plaintiff shall be required to insert in any and all contracts plaintiff makes with outside organizations for new construction or for the reconstruction of existing structures a provision that the work of installing, erecting and moving machinery—the items which are the subject of the jurisdictional dispute aforementioned between the said Machinists and the said Millwrights—shall be performed exclusively by the said Machinists and that the plaintiff should not contract or deal with any general Contractor for said work who will not consent to the insertion of such a provision in all contracts with the plaintiff; that the said Machinists, further, through words and conduct have indicated that they will insist that like action be taken by other Breweries in the St. Louis area all for the purpose of compelling said general Contractors to use Machinists and not to use Millwrights in the installing, erecting, and moving machinery and that if said Contractors fail so to do that they shall run the risk of receiving no business from said Brewers. Affiant further states that he personally knows that it is vitally necessary to the continuing and successful operation of the plaintiff's

plant that it be permitted to do new construction work by adding new buildings and by the remodeling and reconstruction of existing structures; that affiant knows that in the whole St. Louis area, which includes all of the City of St. Louis and St. Louis County, none of the Contractors, large or small, who build, repair or construct buildings and structures as aforementioned has any contract or working agreement with said Machinists Union and that said situation has obtained in like manner at all times since 1939 and for many years prior thereto, with the exception that said Machinists have and do install printing presses and related machinery for said Contractors; that under these circumstances, the insistence of said Union on the insertion of said Section 2 of Article VII in said contracts, makes it practically impossible for plaintiff to get bids on said work or to have it done and is an effort on the part of said Union to have the plaintiff refuse to deal with said Contractors and their employees and likewise is an effort to have said Contractors and their employees to refuse to deal with plaintiff; that affiant personally knows that in the conduct of plaintiff's business it is necessary at all times to have yeast, corn products and beer in various stages of processing and that once such processing has started it must be continued to completion or else a large financial loss will be incurred; that any strike such as that mentioned in plaintiff's petition necessarily causes plaintiff to suffer losses; affiant further states that he personally knows that plaintiff by reason of the strike of the Machinists on April 7, 1952, mentioned in plaintiff's Petition in this cause, was unable to obtain a sufficient production force to maintain its operations and was thereby forced to close down its plant for a period of approximately 12 days, causing losses by reason of the matters hereinabove mentioned. Affiant further states that during the negotiations between the plaintiff company and said Machinists' Union, the defendants stated that a strike would be called by said Machinists unless the plaintiff

yielded to the position of the Union and inserted or agreed to insert Section 2 of Article VII in a new contract; that the defendants then stated that they could agree with the company on all other matters in dispute, provided that Section 2, Article VII, was inserted in said new contract; that otherwise the defendants stated that they would not agree to any contract whatsoever until and unless said Section 2, Article VII, was inserted in the contract, and that under the circumstances they would speciously contend that they were in disagreement on other matters aside from the insertion of Section 2, Article VII, in said contract, stating that they did not want to openly acknowledge that the only issue between the parties related to the insertion of Section 2, Article VII, in said new contract; that, in other words, said defendants stated that they would arbitrarily continue to make further demands for wage increases or any other arbitrary matter in order that they would not have to reveal the true position with reference to Section 2, Article VII; that said defendants stated they had a right—an absolute right—to resort to such tactics as a matter of strategy, and when advised by the affiant that it was the position of the plaintiff company that it could not again sign such a contract because it had been advised by its counsel that it might subject itself to criminal sanctions and treble damages, the defendants stated that they were not concerned with any such matters and that was solely the problem of the plaintiff company which, they stated, was being improperly advised under the circumstances; that the defendants stated that the strike mentioned in plaintiff's petition was called as a result of the failure of the plaintiff company to thus insert Section 2, Article VII, in said new contract, and defendants thereafter repeatedly stated that said strike would continue and that picketing as mentioned in said petition would continue as therein mentioned until the plaintiff company yielded to the position of the Union with reference to said Section 2, Article VII.

Affiant further states that he will not be able to be present for the hearing of said cause now set for Thursday, June 26, 1952, because he has to be in New York City at that time.

(Signed) Richard W. Upshaw,
Richard W. Upshaw.

Subscribed and sworn to before me this 20th day of June, 1952.

My term expires September 7, 1955.

(Signed) F. R. Barrett,
F. R. Barrett,
Notary Public.

Commissioned within and for the County of St. Louis, Missouri, which adjoins the City of St. Louis, Missouri, where this act was performed.

(Seal)

Said Exhibit E, offered on behalf of plaintiff, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit:

PLAINTIFF'S EXHIBIT E.

FURTHER TESTIMONY OF RICHARD W. UPSHAW.

Subject to the terms and conditions of the Stipulation heretofore agreed to, with reference to the Affidavit of Richard W. Upshaw, and by way of direct testimony and in rebuttal to the Affidavit of Russell Davis, it is agreed that if the said Richard W. Upshaw were present, he would testify substantially as follows:

That it was customary for a great number of years prior to 1947 to have all new construction work done by independent contractors and builders in this area; that

Anheuser-Busch, Inc., has no facilities for building such structures with its own employes; that in practically every building that is erected, new machinery of one sort or another must be placed therein; that in the construction of said buildings and in the moving and placement of machinery it is always customary to have the work in connection therewith done by said contractors through the employes of said contractors; that the only exception with reference to said practice has been in connection with work done in June of 1949 by the Fruin-Colnon Contracting Company, who was engaged to construct a feed storage and shipping building, and that when a controversy arose between the Machinists and the Millwrights it was decided by the Management on that occasion to permit the work to be finished by the Machinists, whereupon, the Carpenters walked off the job and filed unfair labor charges against the Plaintiff Company; that all of the building contractors in this whole area have contracts with the Millwrights with reference to the moving and erecting of machinery in new buildings which said contractors are constructing, and that none of said contractors, except as hereinabove noted in the original Affidavit, have any contracts of employment with the Machinists; that in March of 1951 the Carpenters were informed that the Plaintiff Company would not again re-insert Section 2 of Article VII in its contract, and that no contract with the Machinists has been signed since said time, nor has any new construction work been done.

AUGUST A. BUSCH, JR.,

a witness of lawful age, produced, sworn and examined, testified on behalf of the plaintiff as follows:

Direct Examination, by Mr. Eagleton.

Q. Please state your name to the Court. A. August A. Busch, Jr.

Q. What is your business, or occupation? A. President and General Manager of Anheuser-Busch, Incorporated.

Q. How long have you occupied the position of being President of this brewery? A. Since 1946, at the death of my brother.

Q. And prior to 1946 what was your occupation, or affiliation, with the brewery? A. I was Superintendent, General Manager and Vice-President for the past twenty-five years.

Q. Prior to your brother's death, or including the twenty-five years from his death? A. No, prior to brother's death. Thirty years, in total.

Q. I take it, as Superintendent, General Manager, Vice-President and President of Anheuser-Busch, Inc., that you are familiar with the various phases of its operation as a brewery, in connection with the things that are vitally necessary to keeping it operating? A. I think I am.

Q. By way of a little background, how much space does this brewery occupy in St. Louis? A. Approximately seventy-two city blocks.

Q. It's value, from a plant standpoint, is well over One Hundred Million Dollars? A. I would say it's in that range.

Q. In the brewery business, such as you are in, do you have any facilities, or equipment, to do construction work with your own employees? A. No, sir.

Q. Has it been the history, and practice and custom over all of the years you mentioned, during which you were Superintendent, General Manager, Vice-President and President, thirty-one years, to have any construction work, in which the plant expands, or puts in new buildings, or adds new structures to old buildings, to have that done by contractors who are capable of doing that work? A. Yes.

Q. You wouldn't be able to do any portion of that work yourself, except to have that done through contract? A. Yes.

Q. Do you know of your own knowledge for your business to survive, thrive and succeed it is necessary to expand, and from time to time add new buildings to the older structures? A. It is——

Mr. Roessel: I object to the part of the question if he knows in order for the business to survive it's necessary, and so forth.

Mr. Eagleton: I'll take out the word survive.

The Court: All right.

Mr. Eagleton: You did answer?

The Witness: Yes, sir, it is.

Q. (By Mr. Eagleton) Mr. Busch, do you employ regularly, or steadily, certain machinists down at your plant there, the Anheuser-Busch, Inc., in St. Louis? A. Yes. To the best of my knowledge we have had some two hundred and twenty machinists steadily employed for the last five years.

Mr. Roessel: Are those machinists you have employed now, and have employed steadily for the past five years, I assume you had them immediately prior to April 7, 1952?

The Witness: Yes.

Q. (By Mr. Eagleton) Are those machinists which you have in your employ occupied eight hours a day with certain tasks at the brewery day in and day out? A. Yes. Day in and day out.

Mr. Roessel: I object to that. It's immaterial to any fact or issue in this case, if they are employed eight hours there every day. We don't deny it is necessary to contract the work out.

The Court: All right.

Mr. Eagleton: It's admitted. Your machinists are employed steadily and regularly every day?

The Witness: Right.

Q. (By Mr. Eagleton) Now, did you have anything to do with the negotiations with the Machinists, District No. 9, the International Association of Machinists, either Mr. Weber or Mr. Davis, prior to the time of the strike on

April 7, 1952? A. No. Mr. Upshaw handles our labor relations policy.

Q. And has handled those relations for quite a number of years? A. Yes.

Q. Mr. Upshaw is in New York City at the present time? A. Yes.

Q. And will be there for some time? A. Yes.

Q. Mr. Busch, subsequent to the strike, some two or three days after the strike had been in force, I would say April 9, 1952, did you then have contact with Mr. Weber with reference to this matter? A. I met Mr. Weber at the Congress Hotel with Mr. John Wilson.

Q. Did you at that time, at the meeting with Mr. Weber, discuss clause, or Section 2 of Article VII that was in dispute, as to whether or not it would be reinstated in the contract, that you contended that it be eliminated, or modified, so you could live under it? A. I certainly did, and endeavored to get the entire situation of the strike being settled. The strike started April 7, and the meeting was on April 9th.

Q. What did Mr. Weber say at that particular time was the reasons he wanted this Section 2 of Article VII put in the contract?

Mr. Roessel: We object to that, after the strike and negotiations any conversations he may have had with Mr. Weber, as to why Mr. Weber wanted this particular clause retained in the contract. The issues here are these: This clause was in the contract, without dispute, from the first part of January, 1951, and continued in the contract. Now it's there. What the reasons were after the strike has occurred that Weber said he wanted that clause continued certainly is going beyond the issues, and has nothing to do with any fact or issue in this lawsuit.

Mr. Eagleton: Your Honor, it not only shows the reason for the strike, and the contentions at the time the injunction was issued by the Court the contract had expired December 31, 1951, and they were attempting to have it

reinserted, but this is an admission against interest as to the reason why.

Mr. Roessel: This is immaterial, as to a conversation the parties may have had. The facts have been established.

The Court: Overrule the objection. He may answer.

Mr. Eagleton: Read the question, please.

(Last question repeated by reporter, as requested, as follows: "Q. What did Mr. Weber say at that particular time was the reasons he wanted this Section 2 of Article VII put in the contract?")

The Witness: He had us over the barrel, so to speak, and the pressure was against Anheuser-Busch, and that we were the largest employers of machinists and we could control the contractors and force the contractors to employ machinists.

Q. (By Mr. Eagleton) Did he tell you that is what you had to do in order to get along with them? A. That's correct. Every other phase of the contract—as I understood it every other phase of the contract was acceptable with the exception of Section 2 of Article VII, which he insisted be in the contract.

Q. Did he insist it be in as is, without any modifications? A. As is. We asked for modifications, to see if we could arrive at something to modify it so it would be acceptable to our attorneys, Mr. Shepley and your firm, Mr. Eagleton, and you told us it was conspiracy.

Q. Had you been informed by the Shepley firm in 1951 if you attempted to put pressure on the contractors to change their association with their employees that you would be guilty of conspiracy? A. Yes.

Q. Under the laws of the State of Missouri? A. Yes.

Q. Did you tell Mr Weber that? A. Yes.

Q. And what did he say to that? A. He told us it was the proper time to get the thing settled. It had to be that or else.

Q. He wanted you, because you are the largest employer of machinists, to put the pressure on the contractors? A. Yes. If Anheuser-Busch signed the contract with that clause in it the rest of the breweries would have to go along.

Q. And after that the machinists could get the work now being done by the millwrights? A. Yes.

Q. When you employ a construction company, such as Fruin-Colnon Construction Company, or the Gilsonite Construction Company, and, in years gone by, the John Hill Construction Company, or the Dickie Construction Company, to do new construction work of the type we have mentioned here, [illegible] the necessary expansion of your plant, I'll ask you if after they are employed and engaged under contract if you have anything to do with controlling their employees whatsoever? A. No. Certainly not.

Q. You can't hire them? A. No.

Q. You can't fire them? A. No.

Q. You can't give them any directions? A. No.

Q. You can't tell them what union they should belong to? A. Certainly not.

Q. Or what craft? A. Certainly not.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. Just one or two questions, Mr. Busch. This clause, the second paragraph of Article VII, had been the subject of discussion for some time, hadn't it? A. Yes, sir. To my knowledge it had.

Q. Were you one of the parties who went to Washington and discussed that clause with the top officers of the Machinists Union? A. I was not.

Q. Do you know that someone from your organization went there? A. Yes. Mr. Upshaw went there.

Q. Do you know this clause was submitted to the National Labor Relations Board officials in the City of St. Louis? A. I did not.

Q. You don't know that? A. No.

Q. You wouldn't say that wasn't a fact, would you?

Mr. Eagleton: I object to that. He can't be required to say something he don't know.

The Court: Obviously he couldn't answer that.

Q. (By Mr. Roessel) You know, as a matter of fact, after this trip to Washington, and after this discussion with the officials of the National Labor Relations Board, by agreement you did put that clause in the contract?

Mr. Eagleton: I object to the form of the question, because he includes in there after discussion with officials in Washington. It's an assumption there was such a discussion. As a matter of fact, we dispute very definitely the averments that are contained in the affidavit, with reference to that matter. Mr. Ingamells is here and can testify it never took place.

Mr. Roessel: He doesn't deny that people from his company went to Washington?

Mr. Eagleton: That's right.

Mr. Roessel: He doesn't deny that there was a conference with the National Labor Relations Board officials here. All I say is after all that was done if he doesn't know that this plaintiff put, by agreement, that very clause into its contract.

Mr. Eagleton: That's a simple matter, getting to it as a matter of date. What time did these conferences in Washington take place at which you were not present?

The Witness: I don't know.

Mr. Eagleton: And what time was the contract entered into? It speaks for itself.

Mr. Roessel: These conferences took place prior to this time, and after this conference, whether it was six months, or whatever it was, when the 1951 contract was up for negotiation this company, of its own volition, agreed to insert that clause in the contract.

Mr. Eagleton: The thing I want is to make sure we are not misunderstanding each other, by virtue of window

dressing. I have no objection to Mr. Busch stating the date of the conference. We know the date of the contract. It runs from January 1, 1951, to December 31, 1951. All we have to ascertain, without the innuendoes, is when did the conference take place. Was it in 1950?

Mr. Roessel: It took place, relatively speaking, immediately prior to the negotiations for the 1951 contract.

Mr. Eagleton: Wait. I'll see if we can admit that. He doesn't know when it took place. Let's say it was prior to the contract in January, 1951.

Mr. Roessel: We will show, in due time, that conference took place in anticipation and in an attempt to clear up the situation with respect to the 1951 negotiations when that clause was requested to be put in the contract, and there isn't any dispute, if your Honor please, the clause did appear in the contract.

Mr. Eagleton: Those are matters of argument. They are not evidence. If he knows of his own knowledge.

The Witness: I don't know that.

Q. (By Mr. Roessel) You don't know, Mr. Busch, it was in the 1951 contract?

Mr. Eagleton: Yes.

Q. (By Mr. Roessel) You do know the 1951 contract was arrived at by a negotiation and agreement between your company and this union? A. It would have to be.

Q. Why sure.

Mr. Eagleton: That's right.

Q. (By Mr. Roessel) I'm going to ask you this, Mr. Busch, if you know when the time came for the renewal, or whatever you want to call it, of the 1951 contract if your company wasn't served with notice by this union that it desired to terminate this contract and proposed certain changes, all of which were submitted to your company? Do you know that? A. No, I do not.

Q. I'll ask you whether or not your company at any time served this union with notice that at the contract negotiations for the 1952 contract, whether or not your

company at any time advised the union of your position concerning this second paragraph and of your request that be the subject of discussion?

Mr. Eagleton: If he knows?

The Witness: I do not know that.

Mr. Roessel: That's all, Mr. Busch.

(Witness excused.)

OLAF P. VOGEL,

a witness of lawful age, produced, sworn and examined, testified on behalf of the plaintiff as follows:

Direct Examination, by Mr. Eagleton.

Q. Will you please state your name, sir? A. Olaf P. Vogel.

Q. How old a man are you? A. Forty-four.

Q. Are you a married man? A. Yes, sir.

Q. And you live where? A. 3239 Ohio.

Q. By whom are you employed? A. Manufacturers Railroad Company.

Q. And in what capacity? A. Switchman.

Q. How long have you been with the Manufacturers Railroad Company, as a switchman? A. About nine and a half years.

Q. Were you working for that company on the 18th day of April, which was a Friday morning, 1952, as a switch foreman in chage of a switch movement that was attempting to be made, running southward on the north tracks? I am referring to the crossing at Pestalozzi Street in the City of St. Louis? A. Yes.

Q. What happened at that time with reference to the pickets of the defendants, the Machinists Union, when you came to the public crossing at the north side of Pestalozzi Street, heading south, with your cut of cars? A. We couldn't get through. There were men on the track.

Q. How close up to the men did you come in an effort

to get through before you stopped? A. Some of them, twelve inches.

Q. Twelve inches? A. Or three feet.

Q. The track runs north and south? A. Yes, sir.

Q. The same as Seventh Street? A. Yes.

Q. The cut of cars were all south of the engine, is that correct? A. Yes.

Q. The engine was at the north end of the cars? A. Yes.

Q. You were the switch foreman? A. Yes.

Q. When you came down to the southernmost end of that cut of cars, which stopped twelve inches from the pickets, at the public crossing on Pestalozzi Street, will you describe to the Court how the pickets were moving and their proximity to the drawbar of the southernmost car? A. There was one or two in between the tracks at all times. At one time I counted, there was fourteen pickets at one time.

Q. In front of your train movement? A. Walking back and forth.

Q. Did they ever, at any time at that time, clear your track so your movement could go forward? A. No, sir.

Q. And these men that were walking and staying right in the track, were they standing in the proximity of twelve or sixteen inches from the drawbar of the southernmost car? A. Sometimes they were further, but they were awful close.

Q. It might have been a matter of two or three feet? A. Yes.

Q. At that particular time I'll ask you—will you please stand up Chief Casey—this is Joseph Casey of the Metropolitan Police Force of the City of St. Louis—did you see him in the act of talking to these pickets and handing any literature to them, or paper to them, advising what they should or should not do with respect to that picketing? A. He had some kind of literature.

Mr. Roessel: Who had that?

The Witness: Chief Casey.

Mr. Roessel: He was giving that to the pickets?

The Witness: I don't know who he was giving it to.

Q. (By Mr. Eagleton) Did that action on the part of the pickets, in staying in such serious proximity to that train, did it prohibit your movement of cars from going any further? A. Yes.

Q. Because it endangered their lives and limbs in any dispute that may raise between you? A. Yes.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. Do I understand on a public crossing these pickets were moving up and down these railroad tracks? A. Yes.

Q. Were they arrested for trespassing, do you know? A. They were on the sidewalk.

Q. They were on the sidewalk. They weren't on the public crossing then, were they?

Mr. Eagleton: The sidewalk is part of the crossing.

The Witness: The sidewalk is part of the public crossing.

Q. (By Mr. Roessel) They were on the sidewalk of a public street, is that right? A. Yes. I guess it's a public street.

Q. And they were walking up and down there? A. Yes.

Q. Isn't it a fact the crew saw the pickets and observed the picket line and refused to go through? A. No. We tried to go through.

Q. Regardless. And what stopped you from going through? A. Too many men on the track.

Q. Is the track and sidewalk the same thing? A. Yes.

Q. Is that on the property of Busch's? A. It's on Pestalozzi Street. The south sidewalk on Pestalozzi.

Q. Those pickets were on the sidewalk, or street, whatever it may be, which you say is public, and by reason of that you stopped the train because you didn't want to run over them? A. Yes.

Q. Was there any complaint made to the Police Department to stop these pickets from trespassing, or interfering with your train? A. I don't know. I never made no complaint to them. The Superintendent was there and some of the other officials.

Q. Why was Mr. Casey there? A. I don't know. I didn't call him.

Q. The pickets weren't threatening anybody? A. Not that I know of.

Q. You didn't see any bricks, or clubs, around there? A. No.

Q. The pickets were walking up and down on a sidewalk that happened to be occupied by a railroad track? A. Yes.

Q. That's all that occurred. A. I couldn't get through.

Mr. Roessel: That's all.

Redirect Examination, by Mr. Eagleton.

Mr. Eagleton: Mark this as Plaintiff's Exhibit F.

(Photograph marked for identification as Plaintiff's Exhibit F, by reporter, as requested.)

Mr. Roessel: We have no objection to the photograph.

Q. (By Mr. Eagleton) I have had the reporter mark this picture as Plaintiff's Exhibit F. I will show you this and ask you if this particular picture shows the southernmost car, which we were talking about, that was prohibited from moving further, by reason of the pickets, and shows the approximate position which the pickets kept themselves in during that time? A. That's right. They're about right there.

Mr. Roessel: I have no objection to the photograph.

Mr. Eagleton: I think that's all.

Recross-Examination, by Mr. Roessel.

Q. Excuse me. Do you know whether or not these pickets were requested to get out of the way of your train? A. I don't know.

Mr. Eagleton: He doesn't know himself. Casey does.

(Witness excused.)

JOSEPH E. CASEY,

a witness of lawful age, produced, sworn and examined, testified on behalf of the plaintiff as follows:

Direct Examination, by Mr. Eagleton.

Q. Will you please state your full name? A. Joseph E. Casey.

Q. Your business, or occupation? A. Assistant Chief of Police.

Q. Of the Metropolitan Police Force of the City of St. Louis and State of Missouri? A. Yes.

Q. And you were such on the 18th day of April, 1952, in this City? A. Yes.

Q. Were you called in the performance of your duty as Assistant Chief of Police of the City of St. Louis to Seventh and Pestalozzi that morning, by reason of the fact the pickets were stopping movements of trains at that place? A. I don't recall, Mr. Eagleton, whether I was called. But I was in the habit, I made it a practice, to make that my first stop each morning. I arrived there about nine o'clock in the morning.

Q. Friday, April 18, 1952? A. Yes.

Q. And at the time you were by there—may I show you Plaintiff's Exhibit F, and show you a picture of a train that's stopped there, you may see yourself, somewhere in the picture—is that about the condition that maintained there at the time you got there? A. Yes.

Q. Do you see yourself in that picture? There is somebody in uniform? A. That's Captain Mitchell.

Q. You were there when that train was in that position and the pickets in that position? A. I arrived there shortly before Captain Mitchell that particular morning.

Mr. Eagleton: Mark this as Plaintiff's Exhibit G.

(Document marked for identification as Plaintiff's Exhibit G, by reporter, as requested.)

Q. (By Mr. Eagleton) This Plaintiff's Exhibit G, I'll ask you what that is? A. This is a copy of an opinion given to the Police Department, upon request, by our City Counselor, who are the legal advisors of the Police Department.

Q. Did you have a number of those copies of that opinion with you on that day? A. I always carry them in the police car, we have copies of this, because part of my job is keeping abreast of the labor situation for the Police Department.

Q. When the pickets were preventing the removal of that train did you hand one or more of these to the pickets there? A. Yes.

Q. How many? A. Just one.

Q. One individual picket? A. Yes.

Q. After that what did he do with that, as far as you know? A. Could I explain what led up to handing him this?

Q. Go ahead. A. When I arrived at the scene, about nine o'clock, I observed a considerably large group of pickets more or less circling. I judge, I didn't count them, I judge about fourteen or fifteen. They were circling around in a very small area that covered just a little bit more than the center track, the railroad track, upon which there were three or four, maybe five, carloads of coal that had been stopped maybe a couple of feet north of which I would consider the sidewalk, the sidewalk line.

Mr. Roessel: How far from the sidewalk line?

The Witness: I would say a couple of feet. Shortly after I arrived there Chief O'Connell happened to pass——

Q. (By Mr. Eagleton) You don't have to give all those details. What happened after they got this thing from you? Did they keep on picketing? A. They kept on picketing. I observed them for a couple of minutes then I inquired from one of the pickets who was in charge of the pickets. They called a man, a short, stocky, rather dark complected man, I don't recall his name. He told me—I said, "Now, this form of picketing is contrary to legal picketing. You're obstructing the sidewalk, and there's entirely too many of you within this small area. I want to read to you a copy of the opinion given to us," and I did.

Q. You did? A. Yes. I said, "Would you like to have a copy of this?" He said, "Yes. I would like to take it up to the boss. He's in the office." I said, "O. K." Before he left he ordered all but about four of them to leave, leaving approximately four that proceeded to walk back and forth.

Mr. Roessel: Where? On the sidewalk.

The Witness: On the sidewalk. It's about six feet on either side of this railroad train.

Q. (By Mr. Eagleton) But one or more of the group at all times would be in the track? A. Yes.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. The track there is the same as the sidewalk?

Mr. Eagleton: No. The track crosses the sidewalk.

The Witness: Yes.

Mr. Eagleton: The sidewalk runs east and west, and the track runs north and south.

Q. (By Mr. Roessel) Major Casey——

Mr. Eagleton: Colonel Casey.

Q. (By Mr. Roessel) Colonel Casey, at the time you went down there was there any disorder, and rough stuff,

or evidence of violence? A. No, sir. I never heard any remarks passing between any of them.

Q. These pickets were walking in a perfectly orderly way? A. Insofar as any names, or talk was concerned.

Q. You took this paper, which purports to be from the City Counselor, advising them, citing Section 249 of American Jurisprudence, which states "Obstruction of access," and by this they were advised as to violating the premises with respect to ingress and egress. Were they doing anything about violating that? A. I made inquiry from Mr. McGuire, as to why the train was tied up. He said they wouldn't move through because of the pickets blocking this place. That was the only information I would have as to why they were concentrated around there. In my opinion they were circling around in large numbers in that particular space.

Q. Did you make any arrest, saying "If you don't desist"—— A. I did not make any arrest. I always advise the people if they are fully aware of the situation and then if they do not correct it I make an arrest. I would have made an arrest if they kept the same number of people in that particular space.

Q. You read them this section of American Jurisprudence. After you did all that and you made a request of these parties there to modify their activity there they did modify their activity and then you had no further complaint? A. Yes, sir.

Mr. Roessel: That's all.

(Witness excused.)

CLARENCE LAMKEN,

a witness of lawful age, produced, sworn and examined, testified on behalf of the plaintiff as follows:

Direct Examination, by Mr. Eagleton.

Q. Will you please state your full name? A. Clarence W. Lamken.

Q. How old a man are you? A. Thirty-five years.

Q. Married? A. Yes.

Q. Where do you live? A. 5580 Maple.

Q. In the City of St. Louis? A. Yes.

Q. You are a railroad engineer? A. Yes.

Q. Employed by the Manufacturers Railway Company? A. Yes.

Q. You were employed on April 18, 1952, in that same capacity? A. Yes.

Q. Were you a railroad engineer on that morning, about ten-thirty in the morning, operating a Diesel engine eastwardly on Dorcas Street? A. No. That's not Dorcas Street. It's a cross lead into Bevo Mill.

Q. On what other north and south street? A. Second Street.

Q. Where is Dorcas with reference to Pestalozzi? A. It would be a block north.

Q. It's in South St. Louis? A. Yes.

Q. Down at the plant of Anheuser-Busch, Inc.? A. Yes.

Q. Had you gone in with other members of your crew to get some loads out of Anheuser-Busch? A. Yes.

Q. And you were starting away from the loading dock, headed east, about to cross Second Street, running north and south in the City of St. Louis, Missouri? A. Yes.

Q. Confining yourself to that situation there, will you tell us what happened with reference to defendant's pickets at that time? Anything they did to prohibit your movement? A. I received a signal, a hand signal, from the switchman, to pull forward east and as I proceeded to do so, and about the time I came to Second Street the pickets formed a tight circle, or close circle, in front of the engine.

Q. How close did they come to your engine in forming this close and tight circle? A. They stayed in the street.

Q. How close did your engine come up to them? A. Six feet.

Q. Then did they move, or did they keep men in front

of the track on which your engine was being operated? A. They kept men in the track.

Q. How many men were in the circle in this limited space? Were they arranged so some of them would always be on the track? A. Yes.

Q. Did they stop you from going forward? A. It would, with respect to safety of the pickets.

Q. Ordinarily, in operating the engine, you operate only on signals given you by the crew? A. Yes.

Q. You had been given a signal your drag was going to pull east? A. Yes.

Q. Did you, when you got up close to these men, within six feet of them, did you stop on your own, because of the burden of not causing them any disaster, or did you receive a signal? A. I did not receive a signal. I did it on my own.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. At that particular location is Anheuser-Busch, Inc., completely surrounded by buildings, in this particular area you discussed? A. Well, they don't surround this particular area.

Q. Is it in close proximity to their plant? A. Yes.

Q. This sidewalk and street is more or less together. It's not a separate sidewalk? A. As far as I know it's one sidewalk there at that particular point.

Q. This is paved? A. Yes. Second Street is paved.

Q. A. ' the pavement constitutes the area over which people walk? A. Yes.

Q. And in front of your engine is where about three pickets stood, they didn't move, and as a result you didn't run over them and you didn't continue on with your engine? A. They were moving, inasmuch as they were moving in a circle.

Q. Was any threat made to you of violence of any sort? A. No, sir.

Q. It was peaceful. The only thing was they were on the track and you stopped? A. Yes.

Mr. Roessel: That's all.

(Witness excused.)

FRANK L. KEIGHTLEY,

a witness of lawful age, produced, sworn and examined, testified on behalf of the plaintiff as follows:

Direct Examination, by Mr. Eagleton.

Q. Please state your full name? A. Frank L. Keightley.

Q. How do you spell your last name? A. K-e-i-g-h-t-l-e-y.

Q. What business are you in, please? A. Coal and coal hauling.

Q. Where is your place of business? A. 1616 S. 39th.

Q. Did you on occasions haul coal to and from the Anheuser-Busch Brewery? A. We do.

Q. On April 18, 1952, were you on one of the coal trucks endeavoring to deliver coal to the Anheuser-Busch Brewery along with a driver named Adkins that morning when you were stopped and your movement prohibited by the defendant's pickets? A. Yes, I was.

Q. Will you tell us what direction you were headed? A. I was headed south off of Pestalozzi, coming into the coal dock.

Q. You were coming south on Seventh Street and crossing Pestalozzi, and you come in at an angle at the southwest? A. Yes.

Q. What did the pickets do to prohibit your movement at that time? A. They were bunched rather heavy in front of our truck.

Q. How close? A. I couldn't say, sitting in the cab, but they were very close.

Q. Ten or twelve inches? A. Closer than that.

Q. Did they prohibit the movement of your truck at that time? A. Yes.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. You did deliver coal there? A. We have, yes.

Q. You did on that morning. You went right on through the picket lines regardless? A. Subsequently, yes.

Q. So that when you came there the driver of your truck, finding these men blocking his path, decided he didn't want to observe a picket line, is that right? A. What is that question again?

Q. Your driver, at the time he came there and saw these pickets, decided he didn't want to observe that picket line and he went through it and did go through later? A. He went through later.

Q. How much later? A. I don't know, possibly an hour.

Q. Did those pickets make any threats, or was any violence used, or was there any rough stuff there? A. No, sir.

Q. They were there, you saw them, and you decided in spite of the pickets you were going through and you went back and went through? A. Yes.

Mr. Roessel: That's all.

Redirect Examination, by Mr. Eagleton.

Q. Did they make an effort, when you went back and went through, to 'unch up on you again? A. No. They separated. They wasn't on me.

The Court: Where was this coal being delivered?

Mr. Eagleton: To Busch Brewery. You were going south on Seventh, going into the loading dock?

The Witness: Yes.

(Witness excused.)

Thereupon the Court announced a short recess, after which Court convened and the following further proceedings were had, to-wit:

WALTER HENRY RUTLEDGE,

a witness of lawful age, produced, sworn and examined testified on behalf of the plaintiff as follows:

Direct Examination by Mr. Eagleton.

Q. Please state your full name? A. Walter Henry Rutledge.

Q. How old a man are you? A. Thirty-seven.

Q. How do you spell your last name? A. R-u-t-l-e-d-g-

Q. Where do you live? A. Veterans Housing, at Jefferson Barracks.

Q. Mr. Rutledge, what is your present business, or occupation? A. Millwright.

Q. How long have you been a millwright? A. I started out in the Seabees, in 1944.

Q. You have been a millwright ever since? A. Yes.

Q. Were you one of the millwrights, among a number of them, that was employed by the Fruin-Colnon Construction Company in June, 1949, around the 15th, in connection with the building of a mill feed storage plant for Anheuser Busch, Inc.? A. At that time I was a carpenter.

Q. And the millwrights, when we speak of millwright they are part of the carpenters' union, as distinguished from machinists? A. Yes.

Q. How long had you been on that job? A. I think I been there about four or five months.

Q. Your employer was Fruin-Colnon? A. Yes.

Q. You had no employment at that time with Anheuser Busch, Inc.? A. No, sir.

Q. Nor never had at any time? A. No.

Q. That's the feed house that was being constructed there and it was under construction at least four or five months prior to June, 1949, when this episode occurred? A. Yes.

Q. Will you tell us what occurred at that time with reference to the machinists of the defendants coming in

that particular job, what they did and what was done? A. I was assistant steward, this buddy of mine, he was home sick that day, and I was assistant steward——

Q. For the millwrights? A. For the carpenters and millwrights. My foreman came up and said, "You better see what's going on. Some fellows have a block and tackle and are starting to pick up some of the conveyor machines." There was five or six of them and I asked them who gave them orders to start working on that and they said they had their orders from somebody, I don't know who it was, the foreman of the machinists, in fact that's what he stated. I went and called up our carpenters' office, and they said they didn't have any right putting any machinery in there——

Q. You mean the machinists didn't have any right putting any machinery in there? A. Yes. I said, "You fellows have no right to do this work on the job." They got pretty belligerent about it. They said as far as they were concerned millwrights didn't even exist. Foreman Bush of the machinists he came down, our steward was there, some other fellow came down, there was a long rigmarole, and the Superintendent said, "Fire all the carpenters. Get them off the job". The next morning we got off the job.

Q. How many carpenters were there? A. At that time the laborers were on a strike. There were eight or ten carpenters.

Q. You never went back? A. No.

Q. You lost your job, as far as that particular employment is concerned? A. Yes.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. Mr. Rutledge, when was this incident you just related here? A. You mean what time of the day?

Q. No. What month of the year?

Mr. Eagleton: June, 1949.

The Witness: June, 1949.

Q. (By Mr. Roessel) June, 1949? A. Yes.

Q. Who were you employed by? A. Fruin-Colnon.

Q. Fruin-Colnon Construction Company, as a carpenter? A. Carpenter and millwright.

Q. You were employed by Fruin-Colnon? A. Yes.

Q. There was some installation of machinery? A. Yes.

Q. And the machinists union were doing the work? A. They weren't doing the work while we were there.

Q. They attempted to do the work? A. Yes.

Q. You raised a question as to their right to do that work? A. I didn't raise the question about it. I just said they weren't allowed to do it, and weren't going to do it. That's what a steward is on the job for.

Q. Were these machinists employees of Fruin-Colnon? A. No.

Q. They were employees of Anheuser-Busch? A. Yes.

Q. Do you know who assigned that work? A. They said their foreman, I guess Bush.

Q. In response to that direction they were doing this work? A. They were attempting to do it.

Q. What I mean is: In response to a direction from their employer they were there to do that work and you questioned their right to do that work? A. Yes, sir.

Q. You were told then by the company subsequently—what was it you were told? A. You mean about us getting fired?

Q. That's right. A. This one fellow told Floyd Emmert to fire all the carpenters, he didn't want them on the job.

Q. Do you know who that man was? A. No.

Q. Someone told the foreman for Fruin-Colnon—— A. The Superintendent for Fruin-Colnon.

Q. ——to get these men off the job? A. Yes.

Q. You don't know who that was?

Mr. Eagleton: Somebody from Busch's.

Q. (By Mr. Roessel) As a result of that, the following day, or the next day or so, you were told all of you were

fired, is that right? A. We got off the job the next morning, yes.

Q. Do you know, Mr. Rutledge, that that particular work, which was being done at that time, was specifically reserved, taken out of the contract with the Fruin-Colnon Construction Company?

Mr. Eagleton: This man would not know that of his own knowledge.

The Witness: No, sir. I heard that, but I don't know for sure.

Mr. Eagleton: I object to what he heard.

The Court: Yes.

Mr. Eagleton: He said he heard it but he did not know of his own knowledge, and I move his answer be stricken.

The Court: Yes. It will be stricken.

Q. (By Mr. Roessel) It was your understanding, from what you had heard and so forth——

Mr. Eagleton: You are only taking up time. You are not cross-examining.

Mr. Roessel: All right. That's all. Step down.

(Witness excused.)

Mr. Eagleton: I want to offer in evidence Plaintiff's Exhibits A to G, inclusive. I think they have been formally offered. And with that the plaintiff rests.

The Court: They will be received in evidence.

And this was all of the evidence that the plaintiff offered in chief to sustain the issues in its behalf.

DEFENDANT'S EVIDENCE.

Thereupon the defendants, to sustain the issues in their behalf, offered and introduced the following evidence:

Mr. Roessel: At this time, and pursuant to our agreement, I want to offer in evidence the affidavit of Russell Davis.

The Court: Do you want to mark this?

Mr. Roessel: Yes. Mark this as Defendant's Exhibit 1.

(Document marked for identification as Defendant's Exhibit 1, by reporter, as requested.)

Mr. Roessel: I want to offer in evidence, pursuant to stipulation and understanding, Defendant's Exhibit 1.

Mr. Eagleton: If the Court please, your Honor will understand that this is an affidavit setting forth the proposed testimony of witness Russell Davis, subject to objections which may be made the same as if he were on the stand as to competency, materiality and everything else. I think there are a number of matters in here which are hearsay and conclusions, which this person would not have knowledge of, and I'll object to those portions as we go along.

On page 2 this statement appears, and I think it is objectionable as being a conclusion, beyond the witness's knowledge, and the last part of it is certainly objectionable with reference to there being an inference drawn and a conclusion drawn, when the contract would speak for itself, and it is also argumentative in nature, and certainly no witness on the stand would be permitted to give testimony of this character. I read from page 2, "The plaintiff and the Union have no misunderstanding or controversy over the work to be performed by the Union and have never had any such controversy. The 'recognition' clause of all the contracts show this."

No witness could get on the witness stand and say that such is the fact and the recognition clause demonstrates the truth of his testimony. I object to that portion. It is based on a conclusion, particularly the sentence that reads, "The 'recognition' clause of all the contracts show this."

Mr. Roessel: That's in evidence. He is referring to a matter in evidence that shows that the clause says that.

The Court: Don't you think the first part is? If they

don't have any misunderstanding I don't know why we are here working. You claim the contract is in evidence?

Mr. Roessel: Yes.

Mr. Eagleton: It was in the stipulation.

The Court: If it is in evidence it speaks for itself, doesn't it?

Mr. Roessel: That's O. K.

Mr. Eagleton: I move that portion be stricken and not be admitted.

The Court: I'll sustain that objection.

Mr. Eagleton: At the bottom of that same page, the last sentence reads this way: "This is for the legitimate protection of the Union and also for the employees of plaintiff." I have no objection to that except to the word "legitimate".

Mr. Roessel: That may be stricken.

Mr. Eagleton: That is on page 2, the second line from the bottom, your Honor.

Then on page 3, the second paragraph starts this way: the objectionable matter is after the first sentence. "The Union felt compelled to do all in its power to protect itself and to avoid such results." To that sentence I have no objection. That is a statement of their intention.

The next sentence, that follows, I do object to. "The plaintiff recognized the fairness and soundness of the Union's intention and desiring to effectuate the long established custom and practice of the parties agreed in 1948 to the inclusion in Art. VII of an additional paragraph as appears in such contract." That certainly is objectionable, because not only does it say the plaintiff recognized something which the witness wouldn't know, and which is definitely a conclusion, but secondly it is irrelevant and immaterial. I move that it be deleted as being based on a conclusion, and being irrelevant and immaterial, and incompetent for that reason.

The Court: From the words "The plaintiff" down to the end, "contract of 1949"?

Mr. Eagleton: I don't have any objection to that last sentence. "This paragraph was retained in the contract of 1949."

The Court: It isn't of any value?

Mr. Eagleton: No particular value.

The Court: I'll sustain that objection.

Mr. Eagleton: At the top of page 4, your Honor, the very nature of the sentence and the paragraph, which I am about to object to, shows, on its face, it is based on hearsay. It's incompetent, because it's based on the information and belief of the affiant. The witness must have personal knowledge thereof. "On the information and belief of the affiant the plaintiff was supposed to have then advised the carpenters that the plaintiff would not renew any contract with the instant Union which would contain a clause such as Art. VII. However, when the time for renewal of the Union's contract occurred in 1951, Art. VII was retained and the instant paragraph 2 added. No substantial change was made in Art VII." I object to that, it's hearsay.

The Court: You agree it's hearsay?

Mr. Roessel: No.

The Court: It says, "On the information and belief of the affiant the plaintiff was supposed to have then advised the carpenters," and so forth.

Mr. Roessel: If he was testifying on the stand he could state, "It is my information the company advised the carpenters the company would not renew such a contract." Would you admit it?

Mr. Eagleton: No. You can't admit it. When you are admitting testimony by way of affidavit it has to be competent testimony, and it cannot be based on information and belief.

Mr. Roessel: Do you admit the fact, and you're the ones that know, that you did advise the carpenters this contract would not be renewed?

Mr. Eagleton: That is contained in Mr. Upshaw's affidavit, in the last paragraph of it it says the carpenters were informed we would not reinsert that clause, but the information was given in March of 1951.

The Court: I'll sustain the objection.

Mr. Eagleton: Then the very next paragraph, your Honor, page 4, beginning with the words, "To this end, Mr. Richard Upshaw, General Manager of the plaintiff, and Dwight Ingamills, plaintiff's attorney, met with the top officers of the Union in Washington, D. C. The paragraph was then re-written," and so forth. That likewise is based on information and belief, and the witness doesn't indicate any personal knowledge of it and he couldn't have had because he wasn't there and doesn't claim to have been there, and anything he claims that was done by the top officers, or regional officers, could not have any bearing on this case. I move the whole paragraph be stricken.

Mr. Roessel: There is nothing there that indicates he didn't know the paragraph was rewritten and then submitted to the N. L. R. B., who gave a legal opinion. That's within his personal knowledge

Mr. Eagleton: He doesn't say it's of his own personal knowledge.

The Court: It's all tied in together.

Mr. Roessel: No.

Mr. Eagleton: I have no objection to putting in only the first sentence, about that instant clause, if you want that in.

Mr. Roessel: Let's take the second sentence, the witness says——

Mr. Eagleton: The first sentence covers the whole thing.

Mr. Roessel: Well, that's right.

Mr. Eagleton: Strike out starting with the words, "The plaintiff and the Union were desirous of being fair," down to "paragraph was legal." You can leave in, "It was then included in the contract dated January 5, 1951." The word "then" gives a different meaning.

The Court: We will strike it all out.

Mr. Roessel: Why, no. We object to that. It's competent testimony. These things should be left in, because that's a subject for determination.

Mr. Eagleton: It's included in the stipulation of facts. In the stipulation of facts before this Court there is a statement to the effect this particular clause was in the 1951 contract. There isn't any further comment needed.

Mr. Roessel: Except the witness has a right to show he knows that Mr. Ingamells met with the top officers and this paragraph was then rewritten and submitted to the national officials of the N. L. R. B.

Mr. Eagleton: He doesn't state that.

The Court: I don't see what difference it makes.

Mr. Roessel: It makes a lot of difference.

The Court: The contract is in evidence and speaks for itself.

Mr. Eagleton: I move that portion be stricken out.

The Court: All right.

Mr. Roessel: What are you going to strike out?

The Court: From the words "The plaintiff" on down the balance of the paragraph.

Mr. Eagleton: Going over to page 5, down about the middle, if your Honor please, just by way of getting to it, "The Union refused to delete this paragraph." I have no objection to that. "Because of the positive position of the plaintiff and the Union the U. S. Conciliation Service was called in." I have no objection to that. "At subsequent conferences some few matters were discussed and"— then, beginning here, "it is affiant's belief that the changes set out in the Union's list could possibly be worked out, if the plaintiff would fully and fairly bargain with the Union. But the plaintiff refused to do this unless the Union would delete the paragraph in question." I move that portion of the paragraph, beginning with the words "it is affiant's belief" and going down to the word "deadlocked", be stricken, because it is definitely based on hearsay and is incompetent.

Mr. Roessel: I don't think that should cover the portion that it was apparent from the facts the parties were deadlocked. He was there. He is chief negotiator for the Union. That's competent. He is competent to testify, in his opinion, under the facts they were deadlocked.

Mr. Eagleton: His opinion is based on something incompetent.

The Court: He participated in the conference?

Mr. Eagleton: Yes.

The Court: Let's leave that in.

Mr. Eagleton: Leave that statement in, "It was apparent to affiant that the parties were deadlocked." Strike out the rest of it from "it is affiant's belief" to the word "question". Is that right?

The Court: Yes.

Mr. Eagleton: Going down further, in the same paragraph, "On April 6, 1952 the Union by a vote of 206 to 14 decided to strike and on April 7, 1952 did go on strike and placed pickets about the premises of the plaintiff." Leave that in. I think that's all right. I was going to object, on the ground the number who voted for or against the thing would not be material to any issue in this cause, but I don't see how it makes any difference either way. "The said picketing at all times was lawful, and was peaceful and orderly and at no time was there any violence of any character or nature." I object to that, because there is nothing in the affidavit to show the witness knows anything about picketing, or anything else.

Mr. Roessel: Here's the man that's been in charge of the picketing. Here's the man that carried on negotiations. Here's the Assistant Business Representative of the Union.

Mr. Eagleton: I'll waive my objection. Let it go in. Going to the next page, 6, in the first new paragraph, "It is clear that plaintiff seeks to create an undue, and in affiant's opinion, an unfair, inference as to this so-called jurisdictional matter." That's a gratuitous opinion, and should come out.

Mr. Roessel: All right.

The Court: Sustained.

Mr. Eagleton: The next sentence, "Affiant repeats that for years the plaintiff has without question recognized that the work indicated in the 'recognition' clause of all the contracts was to be performed by the Union." I'm not going to make any objection to it, standing alone. "This was re-iterated in the certification of the Union by the N. L. R. B. in 1949 and was carried forward in the succeeding contracts." I'm objecting to that, certainly——

Mr. Roessel: Let's take out the word "re-iterated"?

Mr. Eagleton: All right.

The Court: That would merely say "This was in the certification" and so on?

Mr. Roessel: Yes.

The Court: O. K.

Mr. Eagleton: That is his testimony?

Mr. Roessel: Yes.

Mr. Eagleton: I move to take out the whole sentence.

The Court: I thought you meant just the word "re-iterated"?

Mr. Eagleton: No. The whole sentence.

The Court: Very well. Defendant's Exhibit 1, with the various objections sastained, will be received in evidence.

Said Exhibit 1, offered on behalf of defendants, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit (caption and signatures omitted):

DEFENDANTS' EXHIBIT 1.

STIPULATION.

It is hereby stipulated and agreed by and between the parties that the affidavit of Russell Davis attached hereto may be introduced in evidence in lieu of his testimony with reference to the matters and things contained and

set forth in said affidavit, subject to appropriate and proper objection being made to any part thereof with reference to the materiality or relevancy or competency of said matters. It is understood and agreed between the parties that by thus permitting said affidavit or any part thereof to be introduced in evidence the plaintiff does not admit the truth of the matters contained in said affidavit but is simply agreeing that if said Russell Davis were present he would so testify, and therefore the plaintiff shall be permitted to offer in evidence any other testimony it may so desire in contradiction of said affidavit or in rebuttal thereto or in explanation thereof.

AFFIDAVIT.

Russell Davis, first being sworn on his oath, states:

That he is and for 15 years has been Assistant Business Representative of the International Association of Machinists, District Council No. 9; that as such representative he has conducted negotiations with plaintiff for and on behalf of the Union for a period of 14 years and did conduct the negotiations involving the instant contract. That he is familiar with the background of the negotiations and the surrounding circumstances. That all times it has been the single object and intention of the Union to secure the best wages and working conditions possible for its members and likewise to protect the work allotment given the Union under their certification by the N. L. R. B. in 1948. This certification was subsequent to the enactment of the T-H law and was consistent with the long established understanding with the plaintiff. To this end the plaintiff and the Union have fully cooperated.

For over a quarter of a century the plaintiff and the Union have had contractual relationships and during all this time the contracts have all recognized the work to be performed by the machinists and insofar as their content

and intent is concerned, they have all been in accordance with the purpose heretofore stated. The pertinent clauses in such contracts over a period of years are hereto attached for comparison.

The agreements between plaintiff and the Union have consistently been that the recognized work of the Union was to be performed by machinists, employees of the plaintiff, on the premises of the plaintiff and that if this work was to be contracted out and to be performed within the plaintiff's plant or premises, that such work was recognized as coming within the recognition of the Union and was to be performed by members of the Union.

Comparable clauses to the instant Art. VII show this. The Union is desirous of maintaining this status and of having its traditional work assured it. This can be done by the plaintiff reserving such work to be done by its employees on its premises as it has in the past or if such work is contracted out; then and there only the Union desires assurance that the plaintiff will select contractors who likewise recognize the same provision. This is for the protection of the Union and also for the employees of plaintiff.

About 1948 the Union realized that by virtue of changing conditions and practices the long recognized jurisdiction of the Union might be affected or completely destroyed by the plaintiff contracting out part or all of such work. The Union was familiar with such practice as the "run away shop" where an entire plant was completely moved to another location in order to destroy the recognized work of a Union and to avoid contracts.

The Union felt compelled to do all in its power to protect itself and to avoid such results.

Affiant states that there has been a difference of opinion existing between the carpenters and the machinists which

the plaintiff terms a jurisdictional dispute. There has been no strike or work stoppage by the Union over this subject, however, that in 1950 the plaintiff let a contract for a new building. The plaintiff specifically reserved from such contract all machinery, etc., installation which work was to be done by its own employees. To the best information and belief of affiant such reservation was made known to the contractor. That when said building was nearly completed the work in question was assigned to the plaintiff's employees, members of the Union under this reservation; the carpenters then walked off the job but no picketing was indulged in. Unfair labor practice charges were filed by the carpenters with the N. L. R. B., but these charges were later withdrawn.

The instant clause—that is the second paragraph of Article VII was prepared after collaboration with the plaintiff and the N. L. R. B.

Affiant states that plaintiff's plant has never been closed to his knowledge for fourteen years as a result of any so-called jurisdictional dispute between the carpenters and the Union.

The contract dated January 5, 1951, expired December 31, 1951, and was terminated by the Union by notice on October 29, 1951, which notice was given pursuant to the provisions of the said contract. At this time a list of proposed changes desired by the Union was given plaintiff. A copy of such proposed changes is attached hereto. No reference to Art. VII was made. The plaintiff and the Union first met in negotiations on December 19, 1951.

The Union went over the items of the proposed changes and requested that the plaintiff furnish certain pay roll information showing the base rate for the pay roll ending January 15, 1950. At this conference the plaintiff for the first time brought up the matter of the elimination of the

second paragraph of Art. VII, stating its position to be that unless and until this paragraph was deleted it was useless to consider other matters. Mr. Upshaw, plaintiff's General Manager, stated "that the building trades had put the heat on us." The Union refused to delete this paragraph. Because of the positive position of the plaintiff and the Union the U. S. Conciliation Service was called in. At subsequent conferences some few matters were discussed and * * *. It was apparent to affiant that the parties were deadlocked. It was then, the plaintiff still having failed to furnish the pay roll information requested, that on March 24, 1952, the Union filed unfair labor practice charges with the N. L. R. B. against the plaintiff, copy is herewith attached, which charges are now pending and in the process of investigation by the N. L. R. B. On April 6, 1952, the Union by a vote of 206 to 14 decided to strike and on April 7, 1952, did go on strike and placed pickets about the premises of the plaintiff. The said picketing at all times was lawful, and was peaceful and orderly and at no time was there any violence of any character or nature. On April 8, 1952, the plaintiff filed unfair labor practice charges with the N. L. R. B. vs. the Union. Copy is hereto attached. Complaint thereon has been issued by the N. L. R. B. and said charges are set for hearing at 10:00 a. m. on June 30, 1952, before the N. L. R. B., 14th Region, at St. Louis, Missouri.

Affiant repeats that for years the plaintiff has without question recognized that the work indicated in the "recognition" clause of all the contracts was to be performed by the Union. The Union has never denied plaintiff the right to construct new buildings nor has it ever insisted that contracts for such work be awarded to any specific contractor, nor that paragraph 2 of Art. VII shall be required to be inserted in any contract with any other party. The Union has never stated, nor intended to give the impression that its position in protecting the work per-

formed by the employees of plaintiff called for in its certification issued by the N. L. R. B. in 1948 was specious or was being employed as a scheme or a method of strategy. Affiant further states that the dispute of the Union is solely and only with plaintiff. That the same clause, namely the second paragraph of Art. VII, presently appears in the contract of the Union with the Griesedieck Bros. Brewery Company and that it is true that there was a picket line placed at such plant by the carpenters but that said picket line was, in fact, withdrawn, after a few days.

Affiant further states that the instant strike by the Union and the placing of pickets by it was solely and only because of the plaintiff's refu ' 'o bargain in good faith.

(Signed) Rus. ell L. Davis,
Russell Davis.

Subscribed and sworn to before me this 23rd day of June, 1952.

My term expires 9/18/55.

(Signed) Robt. A. Roessel,
(Seal) Notary Public.

Mr. Roessel: That is the defendants' case, your Honor.

The above and foregoing was all of the evidence adduced on the trial of this cause on the merits at the times mentioned therein.

Thereupon the Court, having heard all of the evidence offered and introduced, took this cause as submitted.

PERMANENT INJUNCTION GRANTED.

Thereupon on September 30, 1952, the Court, by its order duly made and entered of record, entered its decree herein, in words and figures, as follows, to-wit:

(Caption omitted.)

DECREE.

This cause heretofore, or to-wit: the 26th day of June, 1952, having come on for hearing upon an order to show cause why a temporary injunction should not be granted; and the parties then having duly appeared by counsel and having stipulated that the hearing on said order to show cause should be taken and considered as the hearing on both such order to show cause and the merits of the cause, and that the evidence adduced upon such hearing on said order to show cause should be taken and considered in all respects as the evidence and the proceedings on the merits, and that this cause should be taken as submitted on the merits upon such evidence; and the Court having taken and heard the evidence at said hearing on the 26th and 27th days of June, 1952, and on said last mentioned date having taken this cause as submitted upon the plaintiff's petition as amended by interlineation, the defendants' answer thereto, the evidence and proof adduced at said hearing, and the stipulations of the parties; and the Court having heard the arguments of counsel for the parties, and having read and considered the briefs filed by counsel for the parties; and the Court having duly heard, read and considered the pleadings, the evidence, the stipulations of the parties, and the arguments and briefs of counsel, and now on this date being sufficiently advised of and concerning the premises, doth find that plaintiff is entitled to the relief prayed for in its

petition and doth find in favor of the plaintiff and against the defendants herein.

And the Court doth find as follows:

I.

Plaintiff is a producer of beer, yeast and food products at its plant situated in the vicinity of 721 Pestalozzi Street, St. Louis, Missouri. For this production plaintiff uses grains and other raw materials which are shipped into Missouri on common carriers by rail and truck, and are delivered to plaintiff by common carrier and private carrier. Plaintiff's products are shipped to its customers within and without Missouri by common carrier, private carrier and in plaintiff's own vehicles. Plaintiff also stores beer in public warehouses, independently owned, in St. Louis and elsewhere, from which shipments are made to its customers.

II.

Plaintiff's manufacturing processes are of a continuous nature and are interrelated, so that the involuntary stoppage of any part or all of the processes automatically results in progressive spoilage of partially processed grains, yeast and malt, causing extensive damage to plaintiff.

III.

Defendant Lloyd Weber is the business representative, and the defendant Russell L. Davis is the Business Agent of the International Association of Machinists, District No. 9. Defendants Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer and Thomas Mulvaney are members of the negotiating committee of said District No. 9. Membership in said unincorporated labor organization is so numerous that it is impractical to name all members

thereof as defendants herein. The defendants named, however, are sufficient to assure adequate representation of the entire class of persons who are members of and known as the International Association of Machinists, District No. 9, hereinafter at times referred to as the "Machinists." A common question of law and fact exists with respect to the named defendants and the class represented by them known as District No. 9 which question arises out of the protection of the rights of plaintiff concerning which relief is herein sought.

IV.

In the operation of its plant plaintiff employs over 6,000 men, the majority of whom are engaged in producing the Company's products. The various groups of these employees are represented by different labor organizations as bargaining agents. Approximately 220 of plaintiff's employees are represented by said District No. 9 of the International Association of Machinists, whose members constitute the class of persons designated as defendants herein, generally referred to in pleadings and testimony as the "Machinists." These Machinists are steadily employed in the repair and maintenance of the Company's machinery and equipment.

V.

A regular and necessary part of the conduct of plaintiff's business involves expansion of facilities by constructing new buildings and expanding old buildings, and installing new processing, bottling, pasteurizing and other machines and equipment in the new quarters. Plaintiff has no means or facilities for doing the work just mentioned. For at least thirty years this work of constructing new buildings, expanding old bulidings, and moving, erecting and installing machinery therein has been contracted out by plaintiff to independent construction contractors,

and has not been performed by plaintiff through any regular or part time employees of plaintiff. The only exception to this practice occurred in June, 1949, when, to dispose of a controversy between defendants and Millwrights employed by the independent construction contractor, plaintiff finished the machinery installation work with its own employees, represented by the Machinists. This conduct by plaintiff resulted in a work stoppage on the construction job by the carpenters (with whom the Millwrights are affiliated).

VI.

The independent construction contractors engaged by plaintiff to do the work of moving, erecting and installing machinery in connection with the construction of new buildings and the expanding of existing buildings do such work with their own employees who are represented under collective bargaining agreements by the Millwrights' organization, an affiliate of the United Brotherhood of Carpenters. There is no independent contractor, large or small, in the St. Louis area whom plaintiff could select for this work whose employees are represented by District No. 9 of the International Association of Machinists. The employees of these independent construction contractors are not in any manner subject to the control of plaintiff and plaintiff does not have any right to hire or discharge these employees, or to direct or supervise their functions or duties, and has not at any time attempted to do so.

VII.

For at least a quarter of a century the Machinists, the Millwrights, and the independent construction contractors in and around the City of St. Louis, Missouri, have been engaged in a continuing dispute regarding the representa-

tion of the construction contractors' employees who move, erect and install machinery in old buildings which have been enlarged, and in newly constructed buildings. As between the two Unions, this dispute is what is commonly called "jurisdictional dispute." As between the Machinists and the construction contractors, the dispute is a continuing attempt by the Machinists to represent certain of the contractors' employees for purposes of collective bargaining. Anheuser-Busch, Inc., the plaintiff herein, is neutral and is not a party to either dispute. Its efforts to preserve its neutrality furnish the occasion for this suit for injunction.

VIII.

Article VII of the collective bargaining agreement between plaintiff and the Machinists relates to the jurisdiction or work covered by the agreement. Section 1 of Article VII provides:

> "**Section 1**: Jurisdiction: The Employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed by employees within the bargaining unit as set forth in Section 1 of Article I of this agreement, either under its own supervision or such other supervision as the employer shall select."

Section 1 of Article VII has been included in each collective bargaining agreement between plaintiff and the Machinists beginning with the 1948 agreement. The parties regarded it as being declarative of the traditional relationship between plaintiff and the Machinists over the

past quarter century. Section 1 of Article VII has never been and is not now a matter of dispute between the parties.

In compliance with demands of defendants, an additional provision known as Section 2 was inserted in Article VII of the bargaining agreement for the calendar year 1951. This Section 2 of Article VII provided that:

> "In the event it becomes necessary to have such work hereinbefore described contracted out, the Employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations."

In practice this provision was interpreted by the Machinists to require that in the construction of new buildings and the expanding of existing buildings, plaintiff shall deal only with independent construction contractors who agree to do the work of moving, erecting and installing machinery therein with employees who are represented by the Machinists. By this interpretation the Machinists intended to get for their members work which traditionally had been performed by members of other Unions, who were not employees of plaintiff, and which work had never been performed for plaintiff by members of the Machinists' organization except in the one instance in June, 1949, as aforesaid.

This attempt by the Machinists to obtain additional work which they had never performed for plaintiff, transcended any attempt to prevent a "runaway shop" and amounted to a deliberate attempt by defendants to expand the scope of their representation to cover employees of independent construction contractors through the exercise of coercive pressure on plaintiff.

IX.

Plaintiff was advised by its legal counsel that as interpreted by the Machinists, Section 2 of Article VII would require plaintiff to become a party with the Machinists to a common law conspiracy against the independent construction contractors and their employees, and that such a conspiracy also violated Section 416.010, R. S. Mo. 1949, the Missouri Anti-Trade Restraint Law. Plaintiff advised defendants prior to the expiration date of the 1951 bargaining agreement that it could not agree to the reinsertion of Section 2 of Article VII, as interpreted by defendants, in the bargaining agreement for the calendar year 1952.

X.

In collective bargaining prior to April 7, 1952, plaintiff and defendants reached substantial agreement with regard to all phases of the 1952 agreement except Section 2 of Article VII. Defendants made clear their intended meaning of the section that plaintiff should refuse to deal with any construction contractor unless he would agree to do the work of moving, erecting and installing the machinery in connection with the construction of new buildings and the expanding of existing buildings, with employees who were represented by District No. 9 of the International Association of Machinists as their bargaining agent.

It was defendants' announced purpose to obtain like agreements from all the other breweries in the St. Louis area, so that under pressure from all the brewers the construction contractors would be forced to deal with the defendants as bargaining representative for their employees engaged in the moving, erecting and installing of machinery, notwithstanding the fact that these employees were already represented by the Millwrights' organization. In the alternative, the construction contractors would

have to replace their present employees with members of the Machinists' organization. To aid defendants in accomplishing this end, plaintiff was directed by defendants to use influence and pressure on the construction contractors and on the other local brewers.

Under the terms sought to be imposed by defendants, individuals working for or seeking to work for independent construction contractors, moving, erecting and installing machinery at the breweries in the St. Louis area, would have to forego representation by their present bargaining representatives, the Millwrights, with whom the construction contractors already had valid collective bargaining agreements, and become affiliated with defendants' labor organization, the Machinists, in order to retain their jobs with the contractors, or their opportunities for periodic employment at such work.

Defendants obtained the insertion of a clause identical with Section 2 of Article VII in their 1952 bargaining agreement with one brewery in the St. Louis area.

XI.

The aforesaid conduct of the defendants, individually and collectively, as directed against the independent construction contractors and their employees, constituted a conspiracy in violation of the laws of the State of Missouri. If plaintiff inserted Section 2 in Article VII of the 1952 bargaining agreement, as demanded by defendants, having in mind the interpretation defendants placed thereon, and the effects defendants intended to achieve thereby, plaintiff would become a party to said unlawful conspiracy, and as such would be liable at common law to all injured parties for their damages, and under the Missouri Anti-Trade Restraint statute would be liable for the payment of treble damages and subject to criminal prosecution.

XII.

No bona fide labor dispute existed between defendants and plaintiff on April 7, 1952, but defendants prior to that date had continued to raise specious points and issues with reference to matters with which they were already actually in accord with plaintiff, in order to give the false appearance that a labor dispute existed.

XIII.

On April 7, 1952, solely to compel plaintiff to join in the aforesaid conspiracy with the Machinists against the construction contractors and their employees, defendants called a strike of Machinists at plaintiff's plant and placed a picket line around the plant.

XIV.

Defendants' picket line was so placed and maintained that it prevented the movement of railroad cars into and out of plaintiff's premises by a common carrier without danger of physical injury to the pickets, and movement of the cars was stopped for that reason. A delivery of coal by a private carrier likewise was prevented in the same manner.

XV.

The physical presence of defendants' picket line made it impossible for plaintiff to get supplies into the plant and processed materials out of the plant, and forced plaintiff to suspend operations at its plant at 721 Pestalozzi Street, St. Louis, Missouri, for a period of twelve days, during which time it suffered irreparable damages due to spoilage of partly processed grains which it could not process to completion.

XVI.

The conduct of defendants, individually and collectively, as directed against plaintiff for the purposes aforesaid, constituted a conspiracy in violation of the common law of the State of Missouri, and likewise in violation of Section 416.010, R. S. Mo. 1949.

XVII.

Plaintiff has not, and cannot have, any adequate remedy at law under the facts and circumstances hereinbefore set out, and the damage and injury to plaintiff from the maintenance by defendants of a picket line upon or about plaintiff's premises and premises used by plaintiff in the carrying on of its business, under such facts and circumstances, is irreparable and such as to require immediate protection of a court of equity.

Wherefore, It Is Ordered, Adjudged and Decreed by the Court:

1) That the defendants, Lloyd Weber, Russell L. Davis, Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, and each of them, individually and as representatives of the class of persons who are members of and known as the International Association of Machinists, District No. 9, be, and they are hereby permanently enjoined and restrained from:

(a) Conspiring, conniving and unlawfully agreeing to cause, or causing or participating in, concerted action of any nature, including strikes among employees of plaintiff, and the establishment and maintenance of pickets or picket lines at plaintiff's main plant, or elsewhere, for the purpose of forcing or requiring plaintiff to agree with the International Association of Machinists, District No. 9, that work of constructing

new buildings, expanding old buildings, and moving, erecting and installing machinery in such new buildings and expanded old buildings, let out by plaintiff to contractors of any nature or description, shall by said contractors be assigned to employees of said contractors who are members of or are represented by said International Association of Machinists, District No. 9, and from carrying on such activities for the purpose of forcing and requiring plaintiff, and those with whom it so contracts, to assign particular work to employees represented by or who are members of said International Association of Machinists, District No. 9.

(b) So proceeding or so interfering with or restricting passage on or over the various streets, roadways and railroad tracks, or any of them as to affect or interfere with the delivery of materials, goods and products to and from plaintiff's premises; or by any other conduct interfering with the delivery of materials, goods and products to and from plaintiff's premises.

(c) Picketing, setting up a picket line or lines, or maintaining a picket line or lines, on or about the premises of plaintiff; or picketing, setting up a picket line or lines, or maintaining a picket line or lines directed at or against plaintiff, on or about premises where plaintiff stores or warehouses beer and other products, or transacts business in connection therewith.

2) That the cost of this proceeding be paid by defendants, and that execution issue therefor.

Dated this 30th day of September, 1952.

(Signed) David J. Murphy,
Judge of the Circuit Court City of St. Louis, State of Missouri.

DECREE OF SEPTEMBER 30, 1952, SET ASIDE AND VACATED.

On October 3, 1952, the Court, of its own motion, set aside and vacated the decree rendered herein on September 30, 1952.

SEPARATE MOTION OF DEFENDANTS TO DISMISS FOR WANT OF JURISDICTION AND FAILURE TO STATE A CAUSE OF ACTION OVERRULED.

And on the same day, October 3, 1952, the Court, by its order duly made and entered of record, overruled the separate motion of defendants to dismiss for want of jurisdiction and failure to state a cause of action.

DECREE GRANTING PERMANENT INJUNCTION RE-ENTERED.

And on the same day, October 3, 1952, the Court refiled draft of decree filed herein on September 30, 1952, and re-entered decree granting plaintiff a permanent injunction.

MOTION OF DEFENDANTS TO MODIFY THE FINDING AND DECREE HEREIN; MOTION TO SET ASIDE THE FINDING AND DECREE HEREIN AND TO DISMISS PLAINTIFF'S COMPLAINT FOR WANT OF JURISDICTION; MOTION TO SET ASIDE THE FINDING AND DECREE HEREIN AND TO ENTER FINDING AND DECREE FOR DEFENDANTS, DISMISSING PLAINTIFF'S COMPLAINT; AND MOTION FOR A NEW TRIAL, FILED.

On October 13, 1952, the defendants filed a motion to modify the finding and decree herein; a motion to set aside the finding and decree herein and to dismiss plaintiff's complaint for want of jurisdiction; a motion to set aside

the finding and decree herein and to enter a finding and decree for defendants, dismissing plaintiff's complaint, and a motion for a new trial, in words and figures, as follows, to-wit (caption and signature of counsel omitted):

MOTION OF DEFENDANTS TO MODIFY THE FINDING AND DECREE HEREIN.

Come now the defendants herein and move this Court to modify the finding and decree entered herein on October 3, 1952, for the following reasons:

1. That there is no evidence in this case to sustain the finding and decree.

2. That the finding and decree is broader than the findings of fact in that it prohibits and enjoins defendants from negotiating other issues than those which this Court has found illegal, thereby enjoining and prohibiting these defendants from their exercise of the right of free speech as guaranteed by Article I, Section 8, of the Constitution of the State of Missouri, and the 14th Amendment of the Constitution of the United States, and enjoining and prohibiting these defendants from their right to strike and peacefully picket for any and all lawful purposes; that defendants have the legal right to peacefully picket the premises of plaintiff for any and all lawful purposes, regardless of the fact that the presence of a picket line results in interference with deliveries of merchandise to plaintiff's place of business by reason of the refusal of others to cross said picket line as guaranteed by Article I, Section 29, of the Constitution of the State of Missouri, 1945.

3. That the finding and decree of this Court, particularly as related to paragraphs 1 (b) and (c) appearing on page 11 of said Decree, deprive these defendants of rights guaranteed to them under the N. L. R. A., and L. M. R. A., of 1947.

MOTION TO SET ASIDE THE FINDING AND DECREE HEREIN AND TO DISMISS PLAINTIFF'S COMPLAINT FOR WANT OF JURISDICTION.

These defendants further move this Court to set aside the finding and judgment entered on the 3rd day of October, 1952, and to dismiss plaintiff's complaint for lack of jurisdiction for the following reasons:

1. Plaintiff's petition shows on its face that plaintiff seeks the injunctive process and relief of this Court by reason of the alleged violation by these defendants of certain provisions and sections of the National Labor Relations Act and the Labor Management Relations Act of 1947—hereinafter referred to as the N. L. R. A., and the L. M. R. A., respectively, to-wit:

> Section 8 (b), 4 A and B, as amended, and Section 303 (a) 1 and 2 of the Labor Management Relations Act of 1947, hereinafter referred to as the L. M. R. A. —all as set forth in paragraph 9 of said petition.
>
> Section 8 (b) 4 D of the N. L. R. A., and Section 303 (a) 4 of the L. M. R. A., of 1947—all as set forth in paragraph 10 of said petition.
>
> Section 8 (b) 4 A of the N. L. R. A., and Section 303 (a) 1 of the L. M. R. A., of 1947—all as set forth in paragraph 15 of said petition.

2. That exclusive jurisdiction to hear and determine the matters and things as hereinbefore set out has been preempted by the National Labor Relations Board under and by virtue of Section 10 (a) of the N. L. R. A., and that specific remedy is provided for by Section 10 (k) and (l) of said Act; that remedy for violation of Section 303 (a) of the L. M. R. A., is provided for in Section 303 (b) of the said Act and none other.

3. That by reason of the foregoing this Court is wholly and totally lacking in jurisdiction to hear and determine any and all matters as set forth in plaintiff's petition.

4. That plaintiff has failed to state a cause of action in law or in equity under the statutes or the common law of the State of Missouri, and therefore is not entitled to any relief by this Court.

MOTION TO SET ASIDE THE FINDING AND DECREE HEREIN AND TO ENTER FINDING AND DECREE FOR DEFENDANTS, DISMISSING PLAINTIFF'S COMPLAINT.

These defendants move the Court to set aside the finding and decree herein, entered on the 3rd day of October, 1952, and to enter finding and decree for defendants and dismissing plaintiff's complaint for the following reasons:

1. That the judgment and finding and decree of the Court is against the evidence and the weight of the evidence;

2. The finding and decree is against the law;

3. The finding and decree is against the law and the evidence;

4. That there is no evidence to sustain the finding and decree;

5. That the Court has no jurisdiction to hear and determine this cause;

6. Under the law and the evidence the finding and decree of this Court should be in favor of the defendants and against the plaintiff, and plaintiff's petition should be dismissed.

MOTION FOR A NEW TRIAL.

Come now these defendants and move the Court to set aside the finding and decree entered in this case on the 3rd day of October, 1952, and to grant these defendants a new trial for the following reasons:

1. That the judgment and decree of the Court is against the weight of the evidence.

2. That the judgment and decree is against the law and the evidence.

3. That there is no evidence in this cause to sustain the judgment.

4. That under the law and the evidence plaintiff is not entitled to the extraordinary right of an injunction.

5. That the Court's finding that the cause of the damage inflicted on plaintiff herein was the result of a "jurisdictional dispute" divested this Court of its jurisdiction to hear and determine the cause for the reason that Section 8 (b) 4, and more particularly Section 8 (b) 4 D, of the N. L. R. A., Title 29, Section 185, Federal Code, grants jurisdiction to hear and determine such cases only to the National Labor Relations Board under Section 10 (1) and more particularly Section 10 (k).

6. That this Court lacks jurisdiction because the Congress has taken over the field of Labor Relations in cases of this type by virtue of the N. L. R. A., and gives the Board the exclusive right to hear and determine all matters and facts under Section 10 (a) of said Act.

7. That even if this Court has jurisdiction, the most that it may have is concurrent jurisdiction, and this Court is bound to follow the federal law, which this Court refused to do.

8. That even if this Court has jurisdiction, still Missouri Common law does not give the right of injunction to a party because of a "jurisdictional dispute".

9. That this Court can grant no injunction by reason of a jurisdictional dispute because there is no Missouri common law nor Missouri statute which declares such conduct to be against the law or against the public interest.

10. That the granting of this injunction brands defendants as being criminals for which they have not had the benefit of a jury trial as guaranteed under Article I, Section 22 (a), of the Missouri Constitution, 1945, and the due process clause of the 14th Amendment of the Constitution of the United States.

11. That there was no substantial evidence to prove beyond a reasonable doubt that defendants had in fact disobeyed a criminal statute.

12. That the granting of this injunction deprives these defendants of their right of free speech as guaranteed under Article I, Section 8, of the Missouri Constitution, 1945, and the due process clause of the 14th Amendment of the Constitution of the United States.

13. That Section 1 (b) and (c) of the Order and Decree are so broad that in effect they deny defendants the right to effectively negotiate a contract with plaintiff on other grounds than the one enjoined, thus denying defendants their rights as guaranteed under the N. L. R. A., Section 7 of the Act as amended, and the L. M. R. A., of 1947, and also defendants' Constitutional rights under Article I, Section 29, of the Missouri Constitution, 1945.

FOUR MOTIONS OF DEFENDANTS OVERRULED.

On November 17, 1952, the Court filed the following memorandum herein (caption omitted):

Defendants' motion to modify finding and decree overruled.

Defendants' motion to set aside the finding and decree and to dismiss plaintiff's complaint for want of jurisdiction overruled.

Defendants' motion to set aside the finding and decree and to enter finding and decree for defendants, dismissing plaintiff's complaint, overruled.

Defendants' motion for new trial overruled.

(Signed) David J. Murphy,
Judge of the Circuit Court,
Division No. 2.

JUDGMENT APPEALED FROM.

The finding and decree entered by the Court on October 3, 1952, and from which the defendants appeal, is, in words and figures, as follows (caption omitted):

This cause heretofore, on, to-wit, the 26th day of June, 1952, having come on for hearing upon an order to show cause why a temporary injunction should not be granted; and the parties then having duly appeared by counsel and having stipulated that the hearing on said order to show cause should be taken and considered as the hearing on both such order to show cause and the merits of the cause, and that the evidence adduced upon such hearing on said order to show cause should be taken and considered in all respects as the evidence and the proceedings on the merits, and that this cause should be taken as submitted on the merits upon such evidence; and the Court having taken

and heard the evidence at said hearing on the 26th and 27th days of June, 1952, and on said last mentioned date having taken this cause as submitted upon the plaintiff's petition as amended by interlineation, the defendants answer thereto, the evidence and proof adduced at said hearing, and the stipulations of the parties; and the Court having heard the arguments of counsel for the parties, and having read and considered the briefs filed by counsel for the parties; and the Court having duly heard, read and considered the pleadings, the evidence, the stipulations of the parties, and the arguments and briefs of counsel, and now on this date being sufficiently advised of and concerning the premises, doth find that plaintiff is entitled to the relief prayed for in its petition and doth find in favor of the plaintiff and against the defendants herein.

And the Court doth find as follows:

I.

Plaintiff is a producer of beer, yeast and food products at its plant situated in the vicinity of 721 Pestalozzi Street, St. Louis, Missouri. For this production plaintiff uses grains and raw materials which are shipped into Missouri on common carriers by rail and truck, and are delivered to plaintiff by common carrier and private carrier. Plaintiff's products are shipped to its customers within and without Missouri by common carrier, private carrier and in plaintiff's own vehicles. Plaintiff also stores beer in public warehouses, independently owned, in St. Louis and elsewhere, from which shipments are made to its customers.

II.

Plaintiff's manufacturing processes are of a continuous nature and are interrelated, so that the involuntary stoppage of any part or all of the processes automatically results in progressive spoilage of partially processed grains, yeast and malt, causing extensive damage to plaintiff.

III.

Defendant Lloyd Weber is the business representative and the defendant Russell L. Davis is the Business Agent of the International Association of Machinists, District No. 9. Defendants Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney are members of the negotiating committee of said District No. 9. Membership in said unincorporated labor organization is so numerous that it is impractical to name all members thereof as defendants herein. The defendants named, however, are sufficient to assure adequate representation of the entire class of persons who are members of and known as the International Association of Machinists, District No. 9, hereinafter at times referred to as the "Machinists." A common question of law and fact exists with respect to the named defendants and the class represented by them known as District No. 9 which question arises out of the protection of the rights of plaintiff concerning which relief is herein sought.

IV.

In the operation of its plant plaintiff employs over 6,000 men, the majority of whom are engaged in producing the Company's products. The various groups of these employees are represented by different labor organizations as bargaining agents. Approximately 220 of plaintiff's employees are represented by said District No. 9 of the International Association of Machinists, whose members constitute the class of persons designated as defendants herein, generally referred to in pleadings and testimony as the "Machinists." These Machinists are steadily employed in the repair and maintenance of the Company's machinery and equipment.

V.

A regular and necessary part of the conduct of plaintiff's business involves expansion of facilities by constructing new buildings and expanding old buildings, and installing new processing, bottling, pasteurizing and other machines and equipment in the new quarters. Plaintiff has no means or facilities for doing the work just mentioned. For at least thirty years this work of constructing new buildings, expanding old buildings, and moving, erecting and installing machinery therein has been contracted out by plaintiff to independent construction contractors, and has not been performed by plaintiff through any regular or part time employees of plaintiff. The only exception to this practice occurred in June, 1949, when, to dispose of a controversy between defendants and Millwrights employed by the independent construction contractor, plaintiff finished the machinery installation work with its own employees, represented by the Machinists. This conduct by plaintiff resulted in a work stoppage on the construction job by the Carpenters (with whom the Millwrights are affiliated).

VI.

The independent construction contractors engaged by plaintiff to do the work of moving, erecting and installing machinery in connection with the construction of new buildings and the expanding of existing buildings do such work with their own employees who are represented under collective bargaining agreements by the Millwrights' organization, an affiliate of the United Brotherhood of Carpenters. There is no independent contractor, large or small, in the St. Louis area whom plaintiff could select for this work whose employees are represented by District No. 9 of the International Association of Machinists. The employees of these independent construction contractors are not in any manner subject to the control of plaintiff

and plaintiff does not have any right to hire or discharge these employees, or to direct or supervise their functions or duties, and has not at any time attempted to do so.

VII.

For at least a quarter of a century the Machinists, the Millwrights, and the independent construction contractors in and around the City of St. Louis, Missouri, have been engaged in a continuing dispute regarding the representation of the construction contractors' employees who move, erect and install machinery in old buildings which have been enlarged, and in newly constructed buildings. As between the two Unions, this dispute is what is commonly called "jurisdictional dispute." As between the Machinists and the construction contractors, the dispute is a continuing attempt by the Machinists to represent certain of the contractors' employees for purposes of collective bargaining. Anheuser-Busch, Inc., the plaintiff herein, is neutral and is not a party to either dispute. Its efforts to preserve its neutrality furnish the occasion of this suit for injunction.

VIII.

Article VII of the collective bargaining agreement between plaintiff and the Machinists relates to the jurisdiction or work covered by the agreement. Section 1 of Article VII provides:

> "**Section 1**: Jurisdiction: The Employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing, and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed

> by employees within the baragining unit as set forth in Section 1 of Article I of this agreement, either under its own supervision or such other supervision as the employer shall select."

Section 1 of Article VII has been included in each collective bargaining agreement between plaintiff and the Machinists beginning with the 1948 agreement. The parties regarded it as being declarative of the traditional relationship between plaintiff and the Machinists over the past quarter century. Section 1 of Article VII has never been and is not now a matter of dispute between the parties.

In compliance with demands of defendants, an additional provision known as Section 2 was inserted in Article VII of the bargaining agreement for the calendar year 1951. This Section 2 of Article VII provided that:

> "In the event it becomes necessary to have such work hereinbefore described contracted out, the Employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations."

In practice this provision was interpreted by the Machinists to require that in the construction of new buildings and the expanding of existing buildings, plaintiff shall deal only with independent construction contractors who agree to do the work of moving, erecting and installing machinery therein with employees who are represented by the Machinists. By this interpretation the Machinists intended to get for their members work which traditionally had been performed by members of other Unions, who were not employees of plaintiff, and which work had never been performed for plaintiff by members of the Machinists'

organization except in the one instance in June, 1949, as aforesaid.

This attempt by the Machinists to obtain additional work which they had never performed for plaintiff, transcended any attempt to prevent a "runaway shop" and amounted to a deliberate attempt by defendants to expand the scope of their representation to cover employees of independent construction contractors through the exercise of coercive pressure on plaintiff.

IX.

Plaintiff was advised by its legal counsel that as interpreted by the Machinists, Section 2 of Article VII would require plaintiff to become a party with the Machinists to a common law conspiracy against the independent construction contractors and their employees, and that such a conspiracy also violated Section 416.010, R. S. Mo. 1949, the Missouri Anti-Trade Restraint Law. Plaintiff advised defendants prior to the expiration date of the 1951 bargaining agreement that it could not agree to the reinsertion of Section 2 of Article VII, as interpreted by defendants, in the bargaining agreement for the calendar year 1952.

X.

In collective bargaining prior to April 7, 1952, plaintiff and defendants reached substantial agreement with regard to all phases of the 1952 agreement except Section 2 of Article VII. Defendants made clear their intended meaning of the section that plaintiff should refuse to deal with any construction contractor unless he would agree to do the work of moving, erecting and installing the machinery in connection with the construction of new buildings and the expanding of existing buildings, with employees who were represented by District No. 9 of the

International Association of Machinists as their bargaining agent.

It was defendants' announced purpose to obtain like agreements from all the other breweries in the St. Louis area, so that under pressure from all the brewers the construction contractors would be forced to deal with the defendants as bargaining representative for their employees engaged in the moving, erecting and installing of machinery, notwithstanding the fact that these employees were already represented by the Millwrights' organization. In the alternative, the construction contractors would have to replace their present employees with members of the Machinists' organization. To aid defendants in accomplishing this end, plaintiff was directed by defendants to use influence and pressure on the construction contractors and on the other local brewers.

Under the terms sought to be imposed by defendants, individuals working for or seeking to work for independent construction contractors, moving, erecting and installing machinery at the breweries in the St. Louis area, would have to forego representation by their present bargaining representatives, the Millwrights, with whom the construction contractors already had valid collective bargaining agreements, and become affiliated with defendants' labor organization, the Machinists, in order to retain their jobs with the contractors, or their opportunities for periodic employment at such work.

Defendants obtained the insertion of a clause identical with Section 2 of Article VII in their 1952 bargaining agreement with one brewery in the St. Louis area.

XI.

The aforesaid conduct of the defendants, individually and collectively, as directed against the independent construction contractors and their employees, constituted a

conspiracy in violation of the laws of the State of Missouri. If plaintiff inserted Section 2 in Article VII of the 1952 bargaining agreement, as demanded by defendants, having in mind the interpretation defendants placed thereon, and the effects defendants intended to achieve thereby, plaintiff would become a party to said unlawful conspiracy, and as such would be liable at common law to all injured parties for their damages, and under the Missouri Anti-Trade Restraint statute would be liable for the payment of treble damages and subject to criminal prosecution.

XII.

No bona fide labor dispute existed between defendants and plaintiff on April 7, 1952, but defendants prior to that date had continued to raise specious points and issues with reference to matters with which they were already actually in accord with plaintiff, in order to give the false appearance that a labor dispute existed.

XIII.

On April 7, 1952, solely to compel plaintiff to join in the aforesaid conspiracy with the Machinists against the construction contractors and their employees, defendants called a strike of Machinists at plaintiff's plant and placed a picket line around the plant.

XIV.

Defendants' picket line was so placed and maintained that it prevented the movement of railroad cars into and out of plaintiff's premises by a common carrier without danger of physical injury to the pickets, and movement of the cars was stopped for that reason. A delivery of coal by a private carrier likewise was prevented in the same manner.

XV.

The physical presence of defendants' picket line made it impossible for plaintiff to get supplies into the plant and processed materials out of the plant, and forced plaintiff to suspend operations at its plant at 721 Pestalozzi Street, St. Louis, Missouri, for a period of twelve days, during which time it suffered irreparable damages due to spoilage of partly processed grains which it could not process to completion.

XVI.

The conduct of defendants, individually and collectively, as directed against plaintiff for the purposes aforesaid, constituted a conspiracy in violation of the common law of the State of Missouri, and likewise in violation of Section 416.010, R. S. Mo. 1949.

XVII.

Plaintiff has not, and cannot have, any adequate remedy at law under the facts and circumstances hereinbefore set out, and the damage and injury to plaintiff from the maintenance by defendants of a picket line upon or about plaintiff's premises and premises used by plaintiff in the carrying on of its business, under such facts and circumstances, is irreparable and such as to require immediate protection of a court of equity.

Wherefore, It Is Ordered, Adjudged and Decreed by the Court:

1) That the defendants Lloyd Weber, Russell L. Davis, Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, and each of them, individually and as representatives of the class of persons who are members of and known as the International Associa-

tion of Machinists, District No. 9, be, and they are hereby permanently enjoined and restrained from:

(a) Conspiring, conniving and unlawfully agreeing to cause, or causing or participating in, concerted action of any nature, including strikes among employees of plaintiff, and the establishment and maintenance of pickets or picket lines at plaintiff's main plant, or elsewhere, for the purpose of forcing or requiring plaintiff to agree with the International Association of Machinists, District No. 9, that work of constructing new buildings, expanding old buildings, and moving, erecting and installing machinery in such new buildings and expanded old buildings, let out by plaintiff to contractors of any nature or description, shall by said contractors be assigned to employees of said contractors who are members of or are represented by said International Association of Machinists, District No. 9, and from carrying on such activities for the purpose of forcing and requiring plaintiff, and those with whom it so contracts, to assign particular work to employees represented by or who are members of said International Association of Machinists, District No. 9.

(b) So proceeding or so interfering with or restricting passage on or over the various streets, roadways and railroad tracks, or any of them as to affect or interfere with the delivery of materials, goods and products to and from plaintiff's premises; or by any other conduct interfering with the delivery of materials, goods and products to and from plaintiff's premises.

(c) Picketing, setting up a picket line or lines, or maintaining a picket line or lines, on or about the premises of plaintiff; or picketing, setting up a picket line or lines, or maintaining a picket line or lines di-

rected at or against plaintiff, on or about premises where plaintiff stores or warehouses beer and other products, or transacts business in connection therewith.

2) That the costs of this proceeding be paid by defendants, and that execution issue therefor.

Draft filed.

NOTICE OF APPEAL FILED.

On November 20, 1952, the defendants filed their notice of appeal to the Supreme Court of Missouri, in words and figures, as follows, to-wit (caption and signature of counsel omitted):

NOTICE OF APPEAL.

Notice is hereby given that Lloyd Weber et al., the defendants above named, hereby appeal to the Supreme Court of the State of Missouri from the judgment entered in this action on the Third day of October, 1952, and the order of this Court on the 17th day of November, 1952, overruling the defendants' Motion for a new trial and other motions in said cause.

Dated November 20, 1952.

DOCKET FEE PAID.

On November 25, 1952, the defendants deposited Ten Dollars with the Clerk of the Circuit Court of the City of St. Louis as the docket fee for the Supreme Court of Missouri.

CLERK'S CERTIFICATE SHOWING MAILING OF NOTICE OF APPEAL TO THE PARTIES THEREIN NAMED FILED.

On November 26, 1952, the Clerk of the Circuit Court filed the following memorandum in this cause, to-wit (signatures omitted):

MEMORANDUM OF THE CLERK.

I have this day mailed by registered mail a copy of the within notice of appeal to each of the following persons at the address stated:

Roberts P. Elam and David Y. Campbell, 812 Olive St., St. Louis 1, Mo., attys. for plff.

I have also mailed a copy of the notice of appeal to the clerk of the Supreme Court of Missouri together with the docket fee deposited by appellant.

Dated November 26th, 1952.

TRANSCRIPT OF RECORD ON APPEAL APPROVED.

This transcript on appeal is hereby approved this 6th day of April, 1953.

Mark D. Eagleton,
Roberts P. Elam,
David Y. Campbell,
Attorneys for Plaintiff.

Robt. A. Roessel,
Attorneys for Defendants.

CERTIFICATE OF COURT REPORTER.

I, Margaret M. Bresnahan, court reporter in Division No. 2 of the Circuit Court of the City of St. Louis, Missouri, certify that the above and foregoing is a full transcript of the record in the above cause.

I certify that the cost of preparing the full transcript of record is as follows:

154 pages (original) at 45¢ per page	$69.30
154 pages (carbon copy) at 15¢ per page	23.10
Total	$92.40
2 additional carbon copies at 15¢ per page	$46.20

I certify that the full cost of preparing said transcript of the record in the amount of $138.60 has been paid by appellant.

Margaret M. Bresnahan,
Court Reporter, Div. No. 2 of
the Circuit Court of the City
of St. Louis.

[fol. 103] IN THE SUPREME COURT OF THE STATE OF MISSOURI

No. 43,522

ANHEUSER-BUSCH, Incorporated, a corporation, Respondent,

vs.

LLOYD WEBER, RUSSELL L. DAVIS, WALTER PATRICK, THOMAS BLAKE, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, Individually and as Representatives of the International Association of Machinists, District No. 9, Appellants

JUDGMENT—February 8, 1954

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment of aforesaid, in form aforesaid, by the said Circuit Court of the City of St. Louis rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellants its costs nd charges herein expended and have therefor execution. (Opinion filed.)

[fol. 104] IN THE SUPPREME COURT OF MISSOURI, DIVISION NUMBER ONE, JANUARY SESSION, 1954

No. 43522

ANHEUSER-BUSCH, INC., a Corporation, (Plaintiff) Respondent

vs.

LLOYD WEBER, RUSSELL L. DAVIS, WALTER PATRICK, THOMAS BLAKE, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, Individually and as Representatives of the International Association of Machinists, District No. 9, (Defendants) Appellants

Appeal from the Circuit Court of the City of St. Louis

Honorable DAVID J. MURPHY, Judge

OPINION—Filed February 8, 1954

Anheuser-Busch, Inc., hereinafter called plaintiff, operates a brewery and has its principal place of business and plant (covering about 72 city blocks) in the City of St. Louis, Missouri, where it has about 6000 employees. It is there engaged in manufacturing and selling beer, yeast, corn products and other commodities. It purchases and there uses large quantities of grains and other raw materials which are transported and delivered to it at its St. Louis plant by common and private carriers and otherwise. In its St. Louis plant it processes said raw materials into salable commodities. From its said plant it transports and distributes its manufactured commodities for sale to wholesalers, dealers and to warehouses locally and in other cities, by common and private carriers and in its own trucks. In its St. Louis plant plaintiff employs 220 Machinists who are members of the International Association of Machinists, District No. 9, hereinafter called the "Union." Defendants are individually members of, and herein represent the entire class of persons who are members of District 9 of the Union. The Union is the bargaining agent of the above mentioned 220 Machinists. Defendants have

appealed from a judgment of the Circuit Court of the City [fol. 105] of St. Louis, which, after a hearing on the merits, on October 3, 1952, awarded plaintiff a permanent injunction against the defendants and the Union picketing plaintiff's plant.

There is no labor dispute between plaintiff and its employees, and no unfair labor practice is here involved. District No. 9 International Association of Machinists A. F. of L., and Anheuser-Busch, Inc., 101 N. L. R. B., page 346, Labor Management Relations Act, 1947 (Taft-Hartley Act) amending the National Labor Relations Act of 1935, 29 U. S. C. A., § 151, et seq., § 152(9).

The petition of plaintiff prayed an injunction to restrain the picketing of plaintiff's plant by defendants and the Union alleging that such picketing was in furtherance of an unlawful conspiracy, agreement and combination in restraint of trade in the transportation or competition in the importation, transportation, manufacture, purchase and sale of products and commodities in this State in violation of Section 416.010, RSMo. 1949, V. A. M. S.; that defendants and the Union members had unlawfully conspired and seek to compel plaintiff to conspire with the Union members against certain contractors and their employees, and that the picketing of plaintiff's plant was an illegal and coercive act of such conspiracy; and that as a result of such conspiracy and picketing plaintiff was prevented from receiving raw materials in transportation, operating its plant, and transporting its products.

Defendants answered admitting the Union did go on strike on April 7, 1952, and did then place a picket line around plaintiff's plant, and further alleged the picketing was without violence "to tell the world of their position"; the answer also made denial of certain allegations, and alleged plaintiff "has an adequate remedy at law and under the National Labor Relations Act, as amended, and the Labor Management Relations Act."

From the agreed statement of facts and from the evidence in the record before him, and now before us, the Chancellor could have found, and did factually find:

[fol. 106] (1) That plaintiff's above noted manufacturing processes are continuous in nature and interrelated, and the involuntary stoppage of any or all such processes auto-

matically results in progressive spoilage of partially processed grains, yeast, malt and other substances to plaintiff's extensive damages; that the Union members in plaintiff's employment are steadily employed in plaintiff's plant in the repair and maintenance of plaintiff's machinery and equipment therein; that plaintiff's business now and in the future requires and involves the regular and necessary expansion of its plant and facilities by constructing new buildings and expanding existing buildings, and installing, moving and perfecting new machinery and equipment therein, and that plaintiff does not have the means or facilities or equipment for doing that work with its own employees; that for 30 years it has been necessary to, and that new construction and expansion work has always regularly been contracted out by plaintiff to independent construction contractors and such work was not done by plaintiff through any of its regular or part time employees; that the only exception to that was in 1949, when, to end a controversy between the Union and certain Millwright employees of an independent contractor, plaintiff finished certain new machinery installation with its own regularly employed Machinists; that the finishing of that 1949 work by plaintiff resulted in a work stoppage on the construction job by the Carpenters (with whom the Millwrights are affiliated); that the above independent construction contractors perform their above mentioned work for plaintiff with their own employees who are represented under collective bargaining agreements by the Millwrights Union, an affiliate of the United Brotherhood of Carpenters, and those employees of the contractors are not subject to any control by plaintiff, and plaintiff does not employ, discharge or supervise the functions of any of those employees; that there is no contractor, large or small, in the St. Louis area whom plaintiff could select for its above new construction [fol. 107] and expansion work whose employees are represented by the Machinists Union;

(2) That for at least 25 years the Machinists Union and the Millwrights have been engaged in an unresolved and continuing jurisdictional dispute regarding the representation of the above independent construction contractors' employees who move, erect and install machinery in buildings which have been expanded and enlarged, and in newly con-

structed buildings; that the Millwrights are affiliated with the Building and Construction Trades Council in St. Louis and the Machinists Union is not a member of that Council; that the Millwrights and Machinists Unions each make recurring demands upon such independent contractors, and picketing has resulted, when demands are not met; that plaintiff is not a party to any of those jurisdictional disputes;

(3) That in the collective bargaining agreements between plaintiff and the Union, beginning with the first such agreement in 1948, and through the 1951 agreement, it was agreed by plaintiff, in Section 1 of Article VII, that all the therein listed Machinist work "performed *within the employer's plant* by the employer shall be performed" by the Union; that such agreement expressed the traditional relationship of the plaintiff and the Union over a 25 year period and has never been and is not now in dispute; that at the demand of defendants, the 1951 agreement of plaintiff and the Union also provided, in Section 2 of Article VII, that: "In the event it becomes necessary to have such work hereinbefore described contracted out, the Employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations"; that in practice that provision was interpreted by the Union to require that in constructing new buildings and expanding existing ones plaintiff should let such proposed [fol. 108] new construction and expansion work only to independent construction contractors who agreed to do the moving, erecting and installing of machinery therein with only employees represented by the Machinists Union, and the Union thereby sought to secure for Union members the work traditionally performed by members of other unions; that by such attempt of the Union to so obtain work it had never before performed for plaintiff the Union sought, through the exercise of coercive pressure on plaintiff, to expand the scope of its representation to cover and include employees of the above independent construction contractors;

(4) That before the expiration date of the 1951 bargaining agreement plaintiff advised the Union that it could not agree to the reinsertion in the bargaining agreement for

1952 of the above set out Section 2 of Article VII, and that it had been advised by its legal counsel that, as above interpreted by the Union, Section 2 of Article VII would require and compel plaintiff to become a party with the Union to a common law conspiracy against the above independent construction contractors and their employees, and that such conspiracy was also in violation of Section 416.010 RSMo. 1949, V. A. M. S., the Missouri statute which declares combinations in restraint of trade to be a conspiracy;

(5) That in the negotiations for a collective bargaining agreement for 1952 between plaintiff and the Union, and prior to April 7, 1952, plaintiff and the Union were in accord with regard to all provisions of the proposed 1952 agreement except the above set out Section 2 of Article VII; that in such negotiations the Union, through the individual defendants, made clear the Union's intention that plaintiff should refuse to contract any work to any independent construction contractor unless the latter would agree to do the work of moving, erecting and installing all machinery in connection with the construction of new buildings and the expansion of existing buildings with employees who were represented by the Machinists Union;

(6) That the Union announced its purpose and intention [fol. 109] to obtain agreements similar to Section 2, Article VII, above, from all breweries in the St. Louis area so that under pressure from all the brewers the construction contractors would be compelled to bargain with the Union as bargaining representative for their employees moving, erecting and installing machinery notwithstanding those employees were already represented by the Millwrights' Union, or, the construction contractors would be compelled to replace their Millwright employees with Machinist employees; that to assist the Union to accomplish that end, plaintiff was directed by the Union to use pressure on the construction contractors and the other St. Louis area brewers;

(7) That under the terms as above sought to be imposed by the Union, persons employed by or seeking to work for the above construction contractors in moving, erecting or installing machinery in St. Louis area breweries would be compelled to forego representation by their present bar-

gaining agent, the Millwrights' Union, with whom the said construction contractors now have valid collective bargaining agreements, and become affiliated with the Machinists' Union in order to retain their employment with such contractors or lose their opportunity for periodic employment at that work; that after the strike which started April 7, 1952, at plaintiff's plant, the Union did secure the inclusion of a clause identical with Section 2 of Article VII above in its 1952 bargaining agreement with the Griesedieck Western Brewery in Belleville, Illinois, and St. Louis;

(8) That the above conduct of defendants and the Union, individually and collectively, as against the construction contractors and their employees, constituted and was a conspiracy in violation of the above Section 416.010; that if Plaintiff had agreed to the inclusion of the above Section 2 of Article VII into its 1952 bargaining agreement, as demanded by the defendants and the Union, under the interpretation defendants placed thereon and the result defendants intended to achieve thereby, plaintiff would have become party to an unlawful conspiracy and liable to all [fol. 110] injured parties for their damages, and, under the above Missouri statute liable for treble damages and subject to criminal prosecution; that no bona fide labor dispute existed between plaintiff and the Machinists Union on April 7, 1952; that prior to that date defendants and the Union, both in — out of said bargaining negotiations, continued to raise specious and feigned points and issues respecting matters as to which defendants were actually in accord with plaintiff, in order to give the false impression to the public that a labor dispute existed;

(9) That on April 7, 1952, solely to compel plaintiff to join in the above mentioned conspiracy with the Machinists Union against the above construction contractors and their above noted employees, defendants and the Union called a strike of Machinists at plaintiff's said plant and placed a picket line around said plant; that as a result of said strike plaintiff was unable to obtain a sufficient production force to operate its plant, and transportation in and out of plaintiff's plant ceased;

(10) That the picket line of the Union around plaintiff's plant was so placed, maintained, operated, utilized and manipulated that it effectively prevented the movement of

loaded railroad freight cars into and out of plaintiff's premises and plant and effectively prevented and wholly stopped the transportation of raw materials into said plant or manufactured products therefrom without physical injury to the pickets and thereby effectively stopped the movement of cars and the transportation of plaintiff's raw material and manufactured products; that the necessary delivery of coal to said plant was likewise stopped in the same manner; that the physical presence and the above stated manipulation of said picket line made it impossible to transport supplies and raw materials into said plant and to transport plaintiff's processed materials out of plaintiff's said plant and because thereof plaintiff was forced to close its said plant for 12 days, during which time plaintiff suffered [fol. 111] irreparable damages due to spoilage of partially processed grains and other materials which it could neither process to completion nor transport; that the conduct of defendants, individually, collectively, and as such Union, as directed against plaintiff for the purposes above, constituted and was a conspiracy at common law and was also in violation of said above Section 416.010.

The above findings and conclusions of the trial court were supported by substantial evidence.

It also appeared from the evidence heard by the Chancellor: (a) that the picketing of plaintiff's plant was unaccompanied by violence, other than as hereinafter noted; that plaintiff had in its employment building trades workers whose Unions were members of the Building and Construction Trades Council and plaintiff had collective bargaining agreements with such Unions covering such employees; that during the above contract negotiations defendants stated that unless plaintiff agreed to the reinsertion in the 1952 contract of the above Section 2 of Article VII defendants would speciously contend the parties were in disagreement on other contract provisions and would make further demands in other contract fields, because defendants were unwilling to openly acknowledge that Section 2 of Article VII was the only point in issue;

(b) That on April 9, 1952, the president of the plaintiff company met with defendant Lloyd Weber, business representative of the Union, at which time Mr. Weber stated that the reason he wanted Section 2 of Article VII in the Union's

1952 contract wth plaintiff was that he, Mr. Weber, "had us (plaintiff) over the barrel, so to speak, and the pressure was against Anheuser-Busch, and that we (plaintiff) were the largest employers of Machinists and we (plaintiff) could control the contractors and force the contractors to employ Machinists"; that Mr. Weber stated that every other phase of the contract was acceptable but that Mr. Weber insisted that Section 2 of Article VII be also included in the contract; that Mr. Weber stated, "It had to be that or else"; [fol. 112] that Mr. Weber also stated that Anheuser-Busch, because it was the largest employer of Machinists in the area, could put the pressure on the contractors and "the rest of the breweries would have to go along" and that "the Machinists could get the work now being done by the Millwrights";

(c) That during the picketing of plaintiff's plant a number of the pickets who were around plaintiff's plant and picketing the plant were upon the railroad tracks leading into and out of plaintiff's plant; that the transportation into and out of the plant was stopped "because it endangered their lives and limbs"; that the pickets would not clear the railroad track so the movement and transportation in and out of plaintiff's plant could be maintained; that the railroad motive power units pulling cars were moved to within 12 inches of the pickets and then stopped; that the pickets were moving onto and off of the track in a small compact circle but some of the pickets were constantly on the track in front of the train; that the train was stopped and the transportation thereby blocked to prevent physical injury to the pickets; that other pickets were "bunched rather heavily in front of our truck" delivering coal to plaintiff's brewery; that the truck ran to within 12 inches of the pickets and was prevented from proceeding further.

We think it clearly appears and we rule from the above noted substantial evidence that: (a) the above conduct of defendants and the Union, as directed against the independent construction contractors and their Millwright employees, constituted and was a conspiracy in violation of the common and statutory law of this State; (b) that the sole and unlawful purpose of the concerted action of defendants and the Union in picketing plaintiff's plant was to effectuate the Union's unlawful conspiracy and to compel

and coerce plaintiff to join said conspiracy to violate the law by acquiescing in the Union's unlawful demands; (c) that the picketing of plaintiff's plant was effectuated by an agreement and combination of the members of the Union [fol. 113] in restraint of trade and that such picketing was and constituted a local transportation combination which denied and unlawfully prevented the transportation of products and commodities to or from plaintiff's plant, and the processing and manufacturing of products and commodities therein.

It seems clear to us that in picketing plaintiff's plant on April 7, 1952, and thereafter, defendants did so, not as the result of nor as any step in a labor dispute with plaintiff. In that picketing defendants took their final steps in their effort to coerce and compel plaintiff to become an active participant in defendants' conspiracy against the independent contractors and their Millwright Union employees. The instant picketing by the Union was for an illegal purpose.

"A combination for the purpose of causing a breach of contract has been held to be an unlawful conspiracy. A person who by conspiring with another or by collusive agreement with him assists him to violate his contract with a third person and to obtain the benefit of that contract for himself commits an actionable wrong." Rosen v. Alside, Mo. Sup., 248 S. W. (2) 638, 643. Picketing for an unlawful purpose may be enjoined. Fred Wolferman, Inc. v. Root, 356 Mo. 976, 204 S. W. (2) 733, 174 A. L. R. 585, Kincaid-Webber Motor Co. v. Quinn et al., 362 Mo. 375, 241 S. W. (2) 886.

In Chapter 416 of the Missouri statutes respecting "Monopolies, Discriminations and Conspiracies," Section 416.010, "Combination in restraint of trade declared a conspiracy" it is provided that:

> "Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any person or persons in restraint of trade or competition in the importation, transportation, manufacture, purchase or sale of any product or commodity in this state, or any article or thing bought or sold whatsoever, shall [fol. 114] be deemed and adjudged guilty of a con-

spiracy in restraint of trade, and shall be punished as provided in sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400. (8301)."

The above statute has been considered by the courts on prior occasions. Rogers v. Poteet, 355 Mo. 986, 199 S. W. (2) 378; Hobbs v. Poteet, 357 Mo. 152, 207 S. W. (2) 501; Empire Storage & Ice Co. v. Giboney, et al., 357 Mo. 671, 210 S. W. (2) 55 and Giboney v. Empire Storage & Ice Co., 336 U. S. 490, 69 S. Ct. 685, 93 L. Ed. 834. Other cases could be cited.

In Rogers v. Poteet, supra, union members in combination with each other picketed a milk processing plant to prevent rural milk haulers, who were not union members but independent contractors, from transporting and delivering milk to processing plants. We held such concerted action was "a confederation in restraint of competition in the transportation of fresh fluid milk to all the milk processing plants in that area" in violation of the statute (now Section 416.010) which forbade restraint of competition in the transportation of commodities, and affirmed the lower court's injunction.

In Empire Storage & Ice Co. v. Giboney, et al., supra, union members in combination with each other picketed Empire's plant to compel Empire to stop selling ice to non-union ice peddlers. Empire was thus threatened with the alternative of either ceasing to do business with some of its customers, or, "having its business destroyed through a local transportation combination substantially denying delivery service to or from its plant." In that case we ruled that the union used their "local transportation combination improperly to threaten and to produce injury and damage through a boycott of plaintiff's business, and incidentally to injure the business of citizens who are regular customers of its cold storage warehouse, by cutting off supplies to and from its customers"; that the purpose of the [fol. 115] picketing violated Section 416.010, quoted above; that by the picketing the union was "attempting to force plaintiff to become a party to such combination"; and we affirmed the action of the lower court in enjoining the picketing of plaintiff's plant.

The Giboney case went on by appeal and, in a unanimous

opinion, was afirmed by the United States Supreme Court on April 4, 1949. See 336 U. S. 490, 69 S. Ct. 685, 93 L. Ed. 834. That court upheld the Missouri injunction enjoining the picketing. In so doing the United States Supreme Court affirmed the validity of Section 416.010, stating that "Agreements and combinations * * * to dictate the terms under which transportation will be supplied," is a well recognized trade restraint practice "which both state and national legislation can and do prohibit"; that "there is nothing in the Constitution of the United States which precludes a state from adopting and enforcing such policy"; and that the constitutional guaranties do not "afford labor union members a peculiar immunity from laws against trade restraint combinations."

In the course of its Giboney opinion the United States Supreme Court further said: "We are without constitutional authority to modify or upset Missouri's determination that it is in the public interest to make combinations of workers subject to laws designed to keep the channels of trade wholly free and open. * * * Thus all of appellants' activities—their powerful transportation combination, their patrolling, their formation of a picket line warning union men not to cross at peril of their union membership, their publicizing—constituted a single and integrated course of conduct, which was in violation of Missouri's valid law. * * * Missouri has by statute regulated trade one way. The appellant union members have adopted a program to regulate it another way. The state has provided for enforcement of its statutory rule by imposing civil and criminal sanctions. The union has provided for enforcement of its rule by sanctions against union members who cross picket lines. * * * *We hold that the state's* [fol. 116] *power to govern in this field is paramount*, and that nothing in the constitutional guaranties of speech or press compels a state to apply or not to apply its antitrade restraint law to groups of workers, businessmen or others." [Emphasis supplied] We think that case rules the questions now before us.

Notwithstanding the above rulings defendants instantly contend that state courts are without jurisdiction in this character of case, asserting that under the provisions of the National Labor Relations Act and the Labor Manage

ment Relations Act, 1947, the Congress took over *all* controversies with labor by occupying the entire field of all possible Union activities. Defendants' reasoning or statements in their brief purporting to support such assertion are quite unclear and obscure. In any event we do not agree with that assertion. The above quoted opinion of the United States Supreme Court in the Giboney case was handed down nearly two years after the effective date of the Labor Management Relations Act (Taft-Hartley Act) in June, 1947.

As nearly as may be determined from their brief defendants' last stated contention seems to be based upon their ipse dixit that a labor dispute existed between the plaintiff and the Union, and that unfair labor practices are here involved. Defendants' instant brief many times asserts the existence of a labor dispute between these parties. Upon oral argument here the Union's counsel so stated. But upon the substantial evidence before him in this case, and under the provisions of the National Labor Relations Act and the Labor Management Relations Act, 1947, the trial chancellor properly found that no labor dispute existed between these parties. And too, this identical matter was before the National Labor Relations Board upon these facts in Case No. 14-CD-27, upon the Union's charge of unfair labor practices filed under the Labor Management Relations Act on March 24, 1952. In November, 1952, and after a full hearing, the National Labor Relations Board reviewed these facts at length in an opinion filed on November 18, 1952, 101 N.L.R.B., p. 346, No. 87. The Na- [fol. 117] tional Labor Relations Board there squarely held that upon these facts no labor dispute existed between these parties and that no unfair labor practices were there involved, and the Board, upon such ruling, quashed the notice of the hearing.

The cases relied on by the defendants are largely cases involving existing labor disputes and unfair labor practices. We think those cases are not in point.

Defendants rely upon Joseph Garner et al. v. Teamsters etc. Union, Case No. 56, decided by the United States Supreme Court on December 14, 1953 (not yet officially reported), Capital Service v. National Labor Relations Board, 204 Fed. (2) 848, International Union v. O'Brien,

339 U. S. 454, 70 S. Ct. 781, 94 L. Ed. 978, Amazon Cotton Mill Co. v. Textile Workers Union, 167 Fed. (2) 183, California Ass'n of Employers v. Building and Construction Trades Council, 178 Fed. (2) 175, Bethlehem Steel Co. v. State Labor Board, 330 U. S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234.

In Garner v. Teamsters Union, supra, the above court, in part, said: "The Supreme Court of the Commonwealth (Pennsylvania) held, quite correctly, we think, that petitioners' grievance fell within the jurisdiction of the National Labor Relations Board to prevent unfair labor practices." And the court there further stated: "The National Labor Management Relations Act, as we have pointed out, leaves much to the States, though Congress has refrained from telling us how much. * * * Nor is there any suggestion that petitioners' plea of federal jurisdiction and pre-emption was frivolous and dilatory, or that the federal Board would decline to exercise its powers *once its jurisdiction was invoked.*" [Emphasis ours] In Capital Service v. National Labor Relations Board, supra, a federal District Court had issued an injunction at request of National Labor Relations Board in a case presenting an unfair labor practice which was recognized as such by that Board. It was there correctly held that under those cir-[fol. 118] cumstances, the Federal jurisdiction was exclusive under § 160(a) of the Taft-Hartley Act. International Union v. O'Brien, supra, ruled only that certain provisions of the Michigan labor mediation law were invalid under the Commerce Clause of the Federal Constitution. In Amazon Cotton Mill Co. v. Textile Workers Union, supra, wherein the Union alleged that the employer was guilty of an unfair labor practice in refusing to bargain, it was held the Taft-Hartley Act did not vest the federal District Courts with coordinate jurisdiction with the National Labor Relations Board over unfair labor practices. In California Ass'n v. Building and Construction Trades Council, supra, it was held that the National Labor Relations Board has jurisdiction where defined unfair labor practices are at issue. In Bethlehem Steel Co. v. New York Labor Relations Board, supra, ruled prior to the effective date of the Taft-Hartley Act, it was held that the refusal of the National Labor Relations Board to recognize foremen's

unions as appropriate units for collective bargaining did not leave the State authorities administering a State labor law free to do so.

Clearly the just above cases relied on by defendants do not support defendants' contention that the State circuit court was without jurisdiction in the case *now* before us. In the Garner, Capital Service, Amazon Cotton Mill and California Ass'n. cases, supra, unfair labor practices were squarely in issue, and jurisdiction of those cases was in the National Labor Relations Board under § 160(a) of the Labor Management Relations Act, 1947. The Bethlehem Steel and the International Union cases are not determinative of or related to the issue now before us. But these instant facts were before the National Labor Relations Board and no unfair labor practices and no labor dispute was found to exist. The National Labor Relations Board so ruled. A jurisdictional quarrel between two rival labor unions is not a labor dispute within the Norris-La Guardia Act, the Wagner Act or the Taft-Hartley Act.

In Algoma Plywood & Veneer Company v. Wisconsin [fol. 119] Employment Relations Board, (decided March 7, 1949, and subsequent to the effective date of the Labor Management Relations Act, 1947) the Supreme Court of the United States, 336 U. S. 301, 69 S. Ct. 58, 93 L. Ed. 702, said: "Since the enumeration by the Wagner Act and the Taft-Hartley Act of unfair labor practices over which the National Board has exclusive jurisdiction does not prevent the States from enforcing their own policies in matters not governed by the federal law, such freedom of action by a State cannot be lost because the National Board has once held an election under the Wagner Act. The character of activities left to State regulation is not changed by the fact of certification."

In International Union v. Wisconsin Employment Relations Board, 336 U. S. 245, 69 S. Ct. 516, 93 L. Ed. 651, (decided February 28, 1949) the United States Supreme Court considered the authority of the Wisconsin State Board to issue a cease and desist order. In that case bargaining proceedings between the union and the employer were deadlocked. To bring pressure on the employer, the union in five months called 27 union meetings at irregular times during working hours without notice, and without

indication to the employer of how long the employees would cease work. The employer thus could make no dependable production plans or delivery commitments. Under the State Act the Wisconsin Board ordered the union to cease and desist such practices. The State Supreme Court affirmed. In holding the State Board had jurisdiction to make the above order the United States Supreme Court, in part, said: "Congress has not seen fit in either of these Acts (Wagner Act and Taft-Hartley Act) to declare either a general policy or to state specific rules as to their effects on state regulation on various phases of labor relations over which the several states traditionally have exercised control. * * * However, as to coercive tactics in labor controversies, we have said of the National Labor Relations Act what is equally true of the Labor Management Act of 1947, that Congress designedly left open an area for state control and that the intention of Congress to exclude the [fol. 120] States from exercising their police power must be clearly manifested. * * * We find no basis for denying to Wisconsin the power, in governing her internal affairs, to regulate a course of conduct neither made a right under federal law nor a violation of it and which has the coercive effect obvious in this device." See also, Kincaid-Webber Motor Co. v. Quinn, supra, State ex rel Allai v. Thatch, 361 Mo. 190, 234 S. W. (2) 1, 9.

The instant facts have presented to us, not a labor dispute or an unfair labor practice, but activities by and conduct of the Union which were coercive tactics restraining freedom of trade, an internal affair over which this State has "traditionally exercised control." Many years ago, in the enactment of what is now Section 416.010, the legislature declared for Missouri the policy that it is in the public interest to keep trade channels free and open. In no federal legislation do we find any expression of congressional intention which would prevent this state from exercising its traditional and inherent police power in that respect. The State's power to govern in this field has always been held to be supreme.

For reasons above appearing, defendants' contention that the state circuit court was without jurisdiction to grant the injunction must be denied. And upon the facts before it, we must rule that the circuit court properly issued the

instant injunction. Its action in so ordering the injunction to issue is affirmed.

Defendants also contend that the injunction order is too broad. This contention is based upon defendants' position taken here that a labor dispute existed between these parties; that the purpose of the picketing by the Union was not unlawful, and that the injunction issued in the circuit court violated defendants' rights to freedom of speech. Defendants cite Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093. We have above ruled that no labor dispute existed between these parties and that the purpose of the picketing was unlawful and was in violation of a criminal statute.

In the Giboney case, supra, the United States Supreme [fols. 121-122] Court discussed the case of Thornhill v. Alabama, supra, in this respect, and, held in the former case that the Union's entire activities in the picketing "constituted a single and integrated course of conduct, which was in violation of Missouri's valid law," and that the constitutional rights to freedom of the press and speech does not extend "its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute." Under the instant pleadings and the evidence, and under the present state of this record, there having been no renunciation of any character filed, we see no basis whatever for the contention that the injunction order should be in anywise modified. The contention must be denied.

The judgment appealed from its affirmed.

Roscoe P. Conkling, Judge.

All concur.

[File endorsement omitted.]

[fol. 123] In the Supreme Court of Missouri Division No. One, January Session 1954

No. 43522

Anheuser-Busch, Inc., a Corp.; (Plaintiff) Respondent

vs.

Lloyd Weber, et al, (Defendants) Appellants

Appeal from the Circuit Court of the City of St. Louis
Hon. David J. Murphy, Judge

Appellants' Motion for Rehearing—Filed February 20, 1954

Come now the Appellants and file this their motion for a re-hearing in the above matter in which this court on February 8, 1954 filed its opinion and decision affirming the ruling of the trial court, and for grounds of said motion state:

One. That this court has overlooked and completely ignored Article VI of the Constitution of the United States making the laws of the United States the supreme law of the land "—every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

Two. That this court has completely misinterpreted the Garner case (and the Kinard case) recently decided by the Supreme Court of the United States. The Supreme Court held that where the grievance fell within the jurisdiction of the N. L. R. B. to prevent unfair labor practices that therefore state remedies of any sort were pre-cluded. (74 Sup. Ct. Rep. l. c. 164).

Three. That this court has misinterpreted the ruling of the Garner case to wit: "Congress has taken in hand this [fol. 124] particular type of controversy when it affects interstate commerce—(74 Sup. Ct. Rep. l. c. 164 (4)) and hence the N. L. R. B. has exclusive jurisdiction.

Four. That this court has misinterpreted the ruling in the Garner case where it is held that Congress "—went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal—."

(74 Sup. Ct. Rep. l. c. 165 (5-7)) namely the N. L. R. B. which shall have exclusive jurisdiction.

Five. That this court has misinterpreted the ruling in the Garner case where it is held, "We conclude that when federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the Supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure—". (74 Sup. Ct. Rep. l. c. 171 (16-18)). Hence this court has no jurisdiction in the instant case.

Six. That this court has misinterpreted the meaning and intent of Capital Service vs. NLRB. 204 Fed (2d 848; International Union vs. O'Brien 339 545, 70 Sup. Ct. 781, 94 L. Ed. 978; Amazon Cotton Mills vs. Textile Workers Union 167 Fed (2d) 183; California Association of Employers vs. Building Trades Council 178 Fed. (2d) 175; Bethlehem Steel Co. vs. State Labor Board 330 U. S. 767, 67 Sup. Ct. 1026, 91 L. Ed. 1234. The rule of law announced in all these cases is entirely consistent with Appellant's contention.

In the instant case this court misinterpreted the law when it held that the very same conduct within the federal jurisdiction was also amenable to state control under any state law.

Seven. That this court has misinterpreted the ruling of the Supreme Court of the United States in the Giboney case 330 U. S. 490, 69 Sup. Ct. 685, 93 L. Ed. 834 in that there was no question of jurisdiction there involved but rather only the question as to whether the 14th Amendment pre-
[fol. 125] cluded the action taken by the State Court. This case under neither the facts *or* the law has any application at bar. (Our reply Br. p. p. 6-8).

Eight. That this Court is in error when it says on p. 13 of its opinion and decision that the N. L. R. B. "—upon the *Union's charge* of unfair labor practice—after a full hearing—found that no unfair labor practices were involved—." The case before the N. L. R. B. was based on the Company's charge i. e., the charge of the Respondent's herein of an unfair labor practice. (See 101 N. L. R. B. No. 87, p. 346); that this court misinterpreted the ruling and decision of the N. L. R. B. The N. L. R. B. is by no means compelled to find that Respondent's charge be sus-

tained in orer to have jurisdiction to hear and determine the charge in the first instance. (Emphasis ours).

Nine. That this Court has clearly misinterpreted the cases of Rogers vs. Poteet 199 Sw 2d 378; Hobbs vs. Poteet 207 Sw (2d) 55, 336 U. S. 490, 69 Sup. Ct. 685, 93 L. Ed. 834 as we have shown in our Reply Brief p. 5. because in none of these cases was there a dispute direct with the employer involved. Likewise this court is clearly in error on p. 13 of its opinion and decision by inferring that the Taft-Hartley Act (L. M. R. A. 1947) governed the facts in the Giboney case. This court inadvert*ingly* so assumed when it said that the Giboney decision "—was handed down nearly two years after the effective date of—the Taft-Hartley Act in June 1947". The fact is that the facts in the Giboney case, which determine the law, occurred and took place prior to the Taft-Hartley Act or the L. M. R. A.—1947. The Taft-Hartley Act was not involved nor was the question of jurisdiction ever raised (See p. 8 our reply Brief). The Giboney case was decided solely on the question as to whether the 14th Amendment precluded State action.

Ten. That this court has entirely overlooked and ignored the case of Caldwell vs. Anderson et al, 212 S. W. (2d) which Appellants contend is controlling in the instant case. (See our Brief in Chief pp. 19-21).

[fol. 126] *Eleven.* That this Court has entirely overlooked and ignored the case of Dowd vs. Sheet Metal Workers, etc. 101 Fed. (2d) 273 which on the facts is directly in point and which case is cited by Appellants in p. 9 of the Reply Brief.

Twelve. That this Court has overlooked the evidence that this dispute was a direct one between the primary parties as to the retention in the proposed contract of a clause to protect the work of the instant Union for which it was certified and recognized by Art. 1, Sec. 1, of the contract between the parties. This Court has completely ignored the right of a labor organization to protect its work regardless of all other claims, jurisdictional disputes etc., especially in negotiations direct between the Union and the employer.

Thirteen. That this court has misinterpreted the provisions of Art. VII, Sec. 1—*Jurisdiction*, of the contract, namely that the jurisdiction of the Union applied only to

work within the employer's plant. This question is not directly or indirectly before the Court. There is no question before the Court calling for a construction as to what was meant by the phrase "within the employer's plant."

Fourteen. That this Court is completely in error in its effort to show "violence" or unlawful conduct on the part of the pickets. On Paragraph 10, p. 7, and sub-paragraph (c) p. 9 of its opinion and decision when this Court infers that such conduct as indicated was a continuous and re-occurring course of conduct characterizing all the picketing. There is not one scintilla of evidence to sustain this far fetched conclusion. See our Brief pp. 9, 33. This particular conduct occurred as a single, solitary instance in the first few hours of the picketing on the first day and was immediately discontinued and did not re-occur.

The importance and far reaching effects of the Court's decision requires that this case be reheard and re-argued or [fol. 127] that it be transferred to the Court en Banc.

Respectfully submitted, by Roessel-Boxdorfer-Brownell by Robert A. Roessel, Keith M. Brownell, Counsel for Appellants (Defendants).

Affidavit of Service by Mail of the Motion for a Rehearing, dated February 19, 1954, Omitted in Printing.

[File endorsement omitted.]

[fol. 128] IN THE SUPPREME COURT OF THE STATE OF MISSOURI

No. 43,522

[Title omitted]

ORDER DENYING REHEARING—March 8th, 1954

Now at this day, the Court having seen and fully considered the motion of the appellants for a rehearing in the above entitled cause or to transfer said cause to the Court en Banc, doth order that said motion be, and the same is hereby overruled in Per Curiam opinion filed.

[fol. 129] IN THE SUPPREME COURT OF MISSOURI, DIVISION NUMBER ONE, JANUARY SESSION, 1954

No. 43522

ANHEUSER-BUSCH, INC., a corporation, (Plaintiff) Respondent,

vs.

LLOYD WEBER, RUSSELL L. DAVIS, WALTER PATRICK, THOMAS BLAKE, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, Individually and as Representatives of the International Association of Machinists, District No. 9, (Defendants) Appellants

OPINION ON MOTION FOR REHEARING—Filed March 8, 1954

Per CURIAM:

Defendants'-Appellants' motion for rehearing or to transfer to the Court En Banc asserts that Caldwell v. Anderson, 357 Mo. 1199, 212 S. W. (2) 784, and Douds v. Sheet Metal Workers, 101 Fed. Supp. 273, cited by defendants, are determinative and controlling of the issue presented us in this case, and complains that our opinion filed did not notice and discuss those cases. Those cases were examined and considered. We concluded that they did not rule the instant question.

In the Caldwell case, supra, plaintiffs employed only nonunion labor upon a home construction project in St. Louis County. Having been unable to persuade plaintiffs to employ union labor upon the construction project, defendants peacefully picketed the construction project. The purpose of the picketing was to compel plaintiffs to agree to employ upon the project only persons belonging to certain union organizations. We held the contract there sought was not unlawful and did not establish conspiracy. That case is not determinative of the issue presented to us in the [fol. 130] instant case.

In the Douds case, supra, the petition filed on behalf of the National Labor Relations Board against the Sheet Metal Union sought injunctive relief on the ground that the

union was engaged in a "secondary boycott" which the National Labor Relations Act had made an unfair labor practice. The court there ruled that the petition before it failed to allege facts which would establish a secondary boycott. The Douds case does not rule any issue now before us.

The motion for rehearing calls to our attention that in Case No. 14-CD-27, reported in 101 N. L. R. B., page 346, No. 87, it was the plaintiffs' charges of unfair labor practices which were dismissed. That fact can make no difference whatever in our conclusions in this case. The Union and the Company had each filed against the other charges of unfair labor practices before the N. L. R. B. The Union's charges of unfair labor practices by the Company were disposed of on August 17, 1953, and at a time when the fact of the issuance of the instant injunction was before that Board. The Union's charges were disposed of in "Administrative Decision of the General Counsel, Case No. 766," found in C. C. H. Labor Law Reporter—Fourth Edition—2, Par. 12776, wherein it is stated: "A Union charged each of four brewing companies with unlawful refusal to bargain. * * * Union also alleged that by seeking and obtaining an order from a State court restraining the employees in engaging in striking and picketing, Company number one (plaintiff in the instant case) violated Section 8(a)(1) of the [National Labor Management Relations] Act. * * * N. L. R. B. General Counsel sustained the Regional Director's refusal to issue a complaint."

It is not at all clear from defendants' briefs, nor from their motion for rehearing, just what section of what Act of Congress they are in fact relying on. If defendants' reliance be upon Section 8(b)(4)(d) of the Taft-Hartley Act it is obvious that the N. L. R. B. ruled that the instant [fol. 131] facts were not of such character that Section 8(b)(4)(d) of that Act has any application thereto. Both the N. L. R. B. and its General Counsel, in his ruling, concluded that the N. L. R. B. had no jurisdiction whatever because neither a labor dispute nor an unfair labor practice was involved, and that there was no situation presented by the instant facts to which the Taft-Hartley Act applied.

The other points attempted to be asserted in appellants'

motion for rehearing are but a re-argument of the issues and matters ruled and determined in our opinion heretofore filed.

The motion for rehearing, or in the alternative to transfer the case to the Court En Banc, is accordingly overruled.

[File endorsement omitted.]

[fol. 132] In the Supreme Court of Missouri Division Number One, January Session, 1954

No. 43522

[Title omitted]

Motion to Stay Mandate—March 12th, 1954

Come now the appellants above and state to this Court that they propose and intend to apply to the Supreme Court of the United States for the issuance of its Writ of Certiorari to review the opinion and decision of this Court rendered February 8, 1954, and to this end have presently begun to institute the necessary steps for the above purpose.

Wherefore, appellants respectfully pray this Court for its order staying the issuance of its Mandate until such time as the Supreme Court of the United States has acted and passed upon the said petition for the issuance of its Writ of Certiorari.

Respectfully submitted, Roessel, Boxdorfer & Brownell, By Robert A. Roessel, Counsel for Appellants.

[fol. 132a] Certification of Service by Mail of the Motion to Stay the Issuance of the Mandate—Dated March 10th, 1954, omitted in printing.

[fol. 133] IN THE SUPREME COURT OF THE STATE OF MISSOURI

No. 43,522

[Title omitted]

ORDER STAYING THE ISSUANCE OF THE MANDATE—March 12th, 1954

Now at this day, the Court having seen and fully considered the motion of the appellants, this date filed herein, to stay the mandate in the above entitled cause, doth order that said motion be, and the same is hereby sustained.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 134] IN THE SUPREME COURT OF MISSOURI, DIVISION NUMBER ONE, JANUARY SESSION, 1954

No. 43522

[Title omitted]

PRAECIPE FOR PREPARATION OF TRANSCRIPT OF RECORD IN RE APPLICATION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES—Filed March 12th, 1954

To The Clerk of the Supreme Court of Missouri:

Appellants above propose and intend to file a petition with the Supreme Court of the United States for a Writ of Certiorari addressed to the Supreme Court of Missouri, in the above matter.

You are hereby requested to prepare transcript of the record in the above case as the same appears in the records of your office; said transcript to include the following:

1. Authenticated copy of the printed transcript of the record.

2. Copy of the Decision of the Court rendered February 8, 1954.

3. Copy of the Motion for Rehearing filed February 20, 1954.

4. Copy of the Per Curiam Opinion and Ruling of the

Court on appellants' Motion for Rehearing, filed March 8, 1954.

5. Copy of Motion to stay Mandate, filed March 12, 1954
6. Copy of Order of the Court staying the Mandate.

Roessel, Boxdorfer & Brownell, By Robert A. Roessel, Counsel for Appellants.

[File endorsement omitted.]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 97

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, et al., Petitioners,

vs.

ANHEUSER-BUSCH, INC.

ORDER ALLOWING CERTIORARI—Filed October 14, 1954

The petition herein for a writ of certiorari to the Supreme Court of the State of Missouri is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. [redacted] 97

Office - Supreme Court, U. S.
FILED
MAY [illegible] 1954
HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1953.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REED, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9,
Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI.

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2. (a) The Supreme Court of Missouri erred in entertaining jurisdiction because a State Court has no jurisdiction and is without authority to enjoin a union on charges which relate to matters protected or proscribed by the N. L. R. A., as amended, and by the L. M. R. A. (1947) at the request of an employer in interstate commerce, and such employer has no rights with respect to such conduct, other than those which are justiciable under the act 15

(b) The language of the Federal Act and its legislative history exclude action in this case in a State tribunal..... 15

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The question therefore presented is whether the State Court of Missouri, under the facts in this case, has the competence to assume jurisdiction and to hear and determine this case by applying state law in a labor dispute in an industry affecting interstate commerce? Petitioner says "No".. 27

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Direct Transit Lines v Local Union etc., 199 Fed. 2d 89 (6th Cir.) (also on second motion to remand, U. S. Dist. Ct., West Dist. of Mich., 22 Lab. Cases C. C. H., par. 67072, p. 81947). 9

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1953.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REED, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9,
Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Respondent, Anheuser-Busch, Inc. (plaintiff below), is admittedly engaged in interstate commerce (R. p. 22) in the business of ". . . manufacturing and selling beer, yeast . . . and other commodities," with its principal place of business in the City of St. Louis, Mo. It employs approximately 6,000 persons in its St. Louis plant (R. p. 22) of whom about 220 are members of the International Association of Machinists, District No. 9, petitioner herein (defendant below) (R. p. 104).

Petitioner has for approximately 25 years been recognized by respondent as the exclusive bargaining representative of respondent's employees in its St. Louis plant who are employed as machinists (R. p. 24). Petitioner was certified as such exclusive bargaining representative by the National Labor Relations Board (hereinafter referred to as the N. L. R. B. or the Board) on March 25, 1948 (R. p. 25).

In 1951 petitioner gave due and timely notice under the Labor Management Relations Act, 1947 (hereinafter referred to as the L. M. R. A., 1947), and likewise under the provisions of the then existing contract between the parties of its desire to amend and modify the said contract in certain particulars (R. pp. 15, 69). The respondent gave no notice of its desire to terminate the contract or to modify it.

Negotiations between the parties began on December 19, 1951 (R. p. 5). The respondent then insisted on the deletion of Section 2 of Article VII of the said contract.[1] On March 24, 1952, petitioner filed its unfair labor practice charge against the respondent with the N. L. R. B. alleging refusal on the part of the respondent to bargain in good faith. (Said charge was amended on April 18, 1952.) (R. p. 70.) The Regional Director for the 14th Region of the Board refused to issue a complaint, which refusal,

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[1] The said Article VII in its entirety is as follows:

"Article VII, Section 1. Jurisdiction: The employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed by employees within the bargaining unit as set forth in Section 1 of Article 1 of this agreement, either under its own supervision as the employer shall select."

"Section 2: In the event it becomes necessary to have such work hereinbefore described contracted out, the employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations" (R. p. 4).

on appeal, was sustained by the General Counsel of the Board. (See Administrative Decisions of General Counsel, N. L. R. B. case No. 766, August 17, 1953, par. 12,776, CCH Labor Law Service.) After negotiations broke off because of respondent's insistence on the deletion of the said Section 2 of Article VII, and after the Federal Mediation and Conciliation Service was notified, a strike vote was taken on April 6, 1952, the vote being 206 to 14 in favor of a strike. Petitioner, on April 7, 1952, struck and peacefully picketed the premises of the respondent (R. p. 6). The said picketing was peaceful in all respects (R. pp. 16; 44-47; 48-51; 51-54; 54-55; 70, 110).

On April 8, 1952, respondent filed with the Board (14th Region, St. Louis) unfair labor practice charges against the petitioner alleging that petitioner was violating Section 8 (b) (4) (D) of the N. L. R. A., as amended[2] ". . . with the object and purpose of forcing and requiring Anheuser-Busch, Inc., and those contracting with it for the purpose of performing construction work, to assign and cause to be assigned, particular work to employees who are members of and represented by other labor organizations . . .". A notice of hearing was issued by the N. L. R. B. in accordance with Section 10 (k) of the Act,[3] and after the hearing of said alleged charge on July 8, 1952, the Board on November 18, 1952, quashed said notice of hearing, sustaining petitioner's motion ". . . to quash the notice of hearing on the ground that the evidence did not establish a violation of Section 8 (b) (4) (D) as alleged in said charge" (101 N. L. R. B., p. 346, No. 87).

On April 19, 1952, respondent filed its petition and complaint in the Circuit Court of the City of St. Louis, Missouri (R. p. 1), and its amendment by interlineation on April 30, 1952, alleging violation of the Missouri Restraint of Trade (Conspiracy) Statute [R. p. 8, par. 15 (a), re-

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[2] Section 8 (b) (4) (D) of the Act appears in Appendix A.
[3] Section 10 (k) of the Act appears in Appendix A.

spondent's complaint]. The complaint sought to enjoin petitioner from picketing the premises of the respondent in the City of St. Louis (R. p. 2 etc.). The strike and picketing resulted from unsuccessful negotiations directly between the primary parties and was based solely, as stated, supra, on respondent's insistence on the deletion of the said clause (Section 2, Article VII) which appeared in the prior contract between the parties.

The object and purpose of the picketing had to do with the terms and conditions of employment of petitioner concerning the protection and assurance of the work contended for by the petitioner.

On April 19, 1952, and prior to the amendment by interlineation on April 30, 1952, alleging the violation of the Missouri Restraint of Trade Statute, the trial court on the same date, to-wit, April 19, 1952, without notice or hearing, *ex parte*, issued its restraining order and injunction, enjoining petitioner from any and all picketing, which injunction was made final (R. p. 83) and affirmed by the Supreme Court of Missouri (R. pp. 104, 119).

In its original complaint to the State Court respondent charged that petitioner's strike and picketing was for the purpose of furthering a jurisdictional dispute between the petitioner and the Millwrights (A. F. L.), and constituted a secondary boycott, and as such was violative of certain sections of the N. L. R. A., as amended, and of the L. M. R. A. 1947, to-wit:

> (Par. 9) ". . . and therefor constitutes, as to plaintiff, a secondary boycott, and is in violation of Section 8 (b) (4) (A) and (B) of the National Labor Relations Act, as amended, and Section 303 (a) (1) and (2) of the Labor Management Relations Act 1947, and is an attempt by the Machinists, using coercion on plaintiff, to illegally establish the Machinists as bargaining representative for other employees of other employers for

whom the said Machinists have not been certified as bargaining representative by the National Labor Relations Board; and also an attempt to coerce other employers beyond the control of plaintiff to award such work to said Machinists and to unlawfully extend the bargaining rights of said Machinists" (Par. 9, Resp's Complaint, R. pp. 6-7).

(Par. 10 ". . . and therefore constitutes a jurisdictional dispute and is in violation of Section 8 (b) (4) (D) of the National Labor Relations Act, as amended, and Section 303 (a) (4) of the Labor Management Relations Act, 1947" (Par. 10, Resp's Complaint, R. p. 7).

(Par. 15) "Said conduct and activity referred to in Paragraph 14 constitutes a secondary boycott under the common law of the State of Missouri, **and in addition,** is in violation of Section 8 (b) (4) (A) of the National Labor Relations Act, as amended, and Section 303 (a) (1) of the Labor Management Relations Act 1947." (Emphasis ours.) (Par. 15, Resp's Complaint, R. p. 8.)

By the aforesaid amendment of April 30, 1952, and after the issuance by the trial court of the "ex parte" injunction respondent, for the first time, alleged that petitioner's conduct was also violative of the Missouri Restraint of Trade Statute, R. S. 1949, Sec. 416.010, having to do with combinations in restraint of trade (R. p. 8, Par. 15a, Resp's Complaint).

On the 30th day of April, 1952, respondent's cause was removed by petitioner to the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri on the grounds that the state court had no jurisdiction in the matter. The said cause was subsequently remanded by said Court on the 6th day of June, 1952, because the said United States District Court had no power to grant relief.

In due course, on the 10th day of June, 1952, petitioner filed in the State Court its "Separate Motion to Dismiss for Want of Jurisdiction and Failure to State a Cause of Action," and also filed its "Separate Return to the Order to Show Cause and Answer of Defendants" (Petitioners) (R. pp. 11-17).

On the 26th day of June, 1952 (R. p. 19), this matter was heard by the trial court, and on the 3rd day of October, 1952, the trial court overruled the petitioner's (defendant's) Separate Motion to Dismiss for Want of Jurisdiction and Failure to State a Cause of Action, and on said day entered its decree, finding for the respondent and against petitioners, granting respondent a permanent injunction (R. pp. 72-82; 83).

From the finding and decree of the trial court, petitioner appealed to the Supreme Court of Missouri, which Court on the 8th day of February, 1954, entered its decision and judgment affirming the finding and decree of the trial court. Motion for rehearing was overruled by the Supreme Court of Missouri by per curiam opinion on the 8th day of March, 1954 (R. p. 124), and Stay of Mandate was granted on the 12th day of March, 1954, for an indefinite time, i. e., until the ruling by this Court on this petition for a Writ of Certiorari (R. p. 127).

II.

HOLDING OF THE SUPREME COURT OF MISSOURI.

1. The Supreme Court of Missouri held that there was no labor dispute and that no unfair labor practice was involved because the N. L. R. B. had so found in its opinion and decision on the unfair labor practice charge filed by respondent (District 9, International Association of Machinists, and Anheuser-Busch, Inc., 101 N. L. R. B., p. 346, No. 87) (R. pp. 105, 111).

2. That the conduct of petitioner constituted and was a conspiracy in violation of the common and statutory law of Missouri (R. p. 111).

3. That the sole and unlawful purpose of the conduct of petitioner was to effectuate the petitioner's unlawful conspiracy to compel and coerce respondent to join said conspiracy to violate the law (R. p. 111).

4. That the picketing was effected by an agreement and combination of the members in restraint of trade and constituted a local transportation combination which denied and unlawfully prevented the transportation of products from respondent's plant (R. p. 112).

III.

OPINION OF THE SUPREME COURT OF MISSOURI.

The opinion of the Supreme Court of Missouri is reported as Anheuser-Busch, Inc., v. Lloyd Weber et al., 265 S. W. 2nd 325, ... Mo. ... (not yet officially reported), and is dated February 8, 1954. It is herein set out R. pp. 104-119.

The motion for a rehearing (R. pp. 120-123) was overruled on March 8, 1954 (R. p. 123). Per Curiam Opinion was filed on March 8, 1954 (R. pp. 124-126), and Stay of Mandate was ordered on March 12, 1954 (R. p. 127).

IV.

JURISDICTION.

The Jurisdiction of this Court is invoked under Title 28, U. S. C. A., Section 1257 (3) (June 25, 1948, c. 646, 62, Stat. 929). There is a substantial Federal question involving the intrusion by the State of Missouri in the field of labor relations in interstate commerce, a subject pre-empted by Congress and over which the N. L. R. B. has exclusive jurisdiction; also there is the question of the supremacy of the Federal law under Article VI of the Constitution of the United States.

The above Federal questions were raised in the first instance in the trial court by petitioner's "Separate Motion to Dismiss for Want of Jurisdiction . . ." (R. p. 11); were continued in their "Return to the Order to Show Cause and Answer" (R. pp. 13, 105), followed in its "Motion for a New Trial" (R. p. 87), also and raised in its "Motion to Modify," etc., the decree of the trial court (R. p. 83).

The questions were briefed and argued in the Supreme Court of Missouri (R. p. 114) (Opinion of the Missouri Supreme Court).

V.

THE QUESTION.

The question presented is, whether the State Court of Missouri under the facts in this case, has the competence to assume jurisdiction and to hear and determine this case by applying state law in a labor dispute in an industry affecting interstate commerce?

VI.

STATUTES AND REGULATIONS INVOLVED.

Pertinent provisions of the foregoing are set out in Appendix A hereof.

VII.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT AND SPECIFICATIONS OF ERROR.

The Supreme Court of Missouri is in error in each and all of the following:

1. The holding of the Supreme Court of Missouri is in direct conflict with the rulings and decisions of this Court and more particularly the cases of Garner et al. v. Teamsters etc. Union et al., 346 U. S. 485, 98 L. Ed. 161; and Building Trades Council et al. v. Kinard Construction

Company, 346 U. S. 933, 98 L. Ed. 236, decided January 18, 1954, No. 48, as well as the following:

Bethlehem Steel Company v. N. Y. State Labor Board, 330 U. S. 767, 91 L. Ed. 1234, 67 S. C. 1026;

International Union etc. et al. v. O'Brien et al., 339 U. S. 454, 94 L. Ed. 978, 70 S. C. 781;

La Crosse Telephone Corp. v. W. E. R. B., 336 U. S. 18, 93 L. Ed. 463, 69 S. C. 379;

Amalgamated Assoc. of Motor Coach Employees etc. v. W. E. R. B., 340 U. S. 383, 95 L. Ed. 364, 71 S. C. 359;

Hill v. Florida, 32. S. 538, 89 L. Ed. 1782, 65 S. C. 1373.

Also see:

International Rice Mill Co. v. N. L. R. B., 341 U. S. 665, 71 Sup. Ct. 961, 95 L. Ed. 1277;

U. S. v. Hutchinson, 312 U. S. 219, l. c. 232, 234, 85 L. Ed. 788, 61 S. C. 463;

Gen. Comm. v. M. K. & T., 320 U. S. 323, l. c. 336, 88 L. Ed. 76, 64 S. C. 146;

Rice v. Santa Fe Elev. Corp., 331 U. S. 218, 91 L. Ed. 1447, 67 S. C. 1146;

Direct Transit Lines v. Local Union etc., 199 Fed. 2d 89 (6th Cir.) (also on second motion to remand, U. S. Dist. Ct. West Dist. of Mich., 22 Lab. Cases C. C. H., par. 67072, p. 81947);

Capital Service, Inc., v. N. L. R. B., 204 Fed. 2d 848 (9th Cir.);

California Assoc. of Employers v. Bldg. & Const. Trades Council, 178 Fed. 2d 175 (9th Cir.);

Amalgamated Assoc. of Motor Coach Employees v. Dixie Motor Coach Corp., 170 Fed. 2d 902 (8th Cir.).

2. (a) The Missouri Court had no jurisdiction to hear and determine this case and was without authority to enjoin a Union on charges which relate to matters either

protected or proscribed by the N. L. R. A. as amended and by the L. M. R. A. 1947, at the request of an employer engaged in interstate commerce, and such employer has no rights with respect to such conduct other than those which are justiciable under the Federal statute.

Garner et al. v. Teamsters etc., 346 U. S. 485, l. c. 501;
Hill v. Florida, 325 U. S. 538, l. c. 542;
Bethlehem Steel Co. v. N. Y. State Labor Board, 330 U. S. 767, l. c. 774;
International Union etc. v. O'Brien, 339 U. S. 454, l. c. 459;
Amazon Cotton Mill Co. v. Textile Workers Union etc., 167 Fed. 2d 183, l. c. 187;
Inland Steel Co. v. N. L. R. B., 170 Fed. 2d 247 (and cases, supra).

(b) The language of the Federal Act and its legislative history clearly excludes state action in this case by any state tribunal.

(c) The clear and unmistakable policy of Congress, as declared in the N. L. R. A. as amended, Sections 7, 13, 10 (a), 10 (j), 10 (k), 10 (l); and Sec. 303 (a) (4) L. M. R. A. 1947. Title 29 U. S. C., Par. 160 et seq., give to the N. L. R. B. the power to enforce any provision of the Act and this power ". . . is not affected by any other means of adjustment or prevention that has been given or may be established by law or agreement . . ." [Sec. 10 (a)].

(d) The facts in this case unequivocally place it within the ambit of the Federal law.

3. To permit the jurisdiction of Missouri under the facts here is to permit the eroding away of Federal authority and the destruction of the clear Congressional purpose of exclusive jurisdiction in the N. L. R. B.

4. A conflict of law exists and the Federal law is supreme under Article VI of the Constitution of the United States.

Art. VI, Constitution of U. S.

VIII.

ARGUMENT.

1. **The Supreme Court of Missouri is in Error in Holding That the Cases of Garner et al. v. Teamsters Union et al., 346 U. S. 485; 98 L. Ed. 161; Building Trades Council et al. v. Kinard Construction Company, 346 U. S. 933; 98 L. Ed. 236 (Decided January 18, 1954, No. 48), Are Not Applicable and Controlling in This Case.**

As we read the Garner case we deem it dispositive of the instant matter, especially if the spirit and intent of that case and **the principle** it announces is followed and no strained or unnatural construction is given it. We think the Supreme Court of Missouri did just that, apparently seeking to evade the impact of the Federal law and to usurp for itself control and regulation which we believe cannot be permitted.

The Missouri Court seeks to brush aside and to ignore this Court's holding in the Garner case by stating: "In the Garner case . . . (and others cited by petitioner) . . . unfair labor practices were squarely in issue, and jurisdiction in those cases was in the National Labor Relations Board under par. 160 (a) of the L. M. R. A. 1947" (R. 117), thus inferring that there were no unfair labor practices in the case at bar and hence the Garner case cannot control! Yet we say that there can be no more definite and certain allegation of unfair labor practices than respondent has made in this case and has squarely put in issue and by which it is bound. Therefore, under the facts, it is indeed a strained reasoning by the Missouri Court that no unfair labor practice exists in the instant matter because, says the Missouri Court, the opinion of the N. L. R. B. in respondent's unfair labor practice charge case so states. **This we flatly deny.**

It must be remembered that the N. L. R. B. has the **primary and exclusive** right to determine in the first instance the existence of a labor dispute, its materiality, and whether there is an unfair labor practice under the Federal law. This is elementary. No state court has a right to decide these factors for itself—one way or another, as the Missouri Court seeks to do.

The Board exercised its exclusive jurisdiction when invoked by respondent. The Board, then had the unquestioned right to decide the matter. It quashed the notice of hearing on the Union's motion, which in effect dismissed the charge. Decision by the Board does not create or destroy jurisdiction. This Court, in **Bethlehem Steel Company v. N. Y. State Labor Board,** 330 U. S. 767, l. c. 775, has appropriately held:

> "The power to decide a matter can hardly be made dependent on the way it is decided."

The Board **did not decide** that it had no jurisdiction but rather that under the evidence presented there was no basis for respondent's charge, that there was no **present** demand for assignment of work such as is contemplated by Section 8 (b) (4) (D) of the Amended Act. A reading of the Board's decision, **101 N. L. R. B. 346 (No. 87)**, demonstrates clearly that there is no foundation in fact for the Missouri Court's conclusion and holding. There are **other sections** of the Federal law also alleged by respondent to have been violated by petitioner, which the Board has had no opportunity to determine or even to consider. The gravamen of respondent's complaint, as its petition shows, and particularly Pars. 3, 9, 10 and 15 (R. pp. 3, 6, 7, 8), is that the whole controversy is based on a jurisdictional dispute of long standing with the Millwrights (Carpenters). This question is clearly for the determination of the N. L. R. B. on a proper presentation to it. [N. L. R. A. as amended, Sec. 8 (b) (4) (D); Sec. 303 (a) (4), L. M. R. A. 1947.] (See Appendix A.)

This Court squarely held, in the Garner case, **the principle** for which we maintain, when it stated:

> "Congress has taken in hand this particular type of grievance when it affects interstate commerce" (346 U. S. 485, l. c. 488).
>
> ". . . The power and duty of primary decision lies with the Board, not with us. But it is clear that the Board was vested with power to entertain petitioners grievance, to issue its own complaint against respondents and, pending final hearing, to seek from the U. S. District Court an injunction to prevent irreparable injury to petitioners while their case was being considered" (346 U. S., l. c. 489).

The question propounded by this Court, and applicable here, is:

> ". . . whether the State, through its courts, may adjudge the same controversy and extend its own form of relief?" (346 U. S., l. c. 489).

We aver that the nature or character of the particular state law, which is invoked to sustain state jurisdiction, is of no moment (except to maintain and preserve the public peace from violence).

Certainly there is nothing sacrosanct about a state "Restraint of Trade Statute" which gives it dominance or precedence over Federal authority or power, any more than a state labor law. Both must yield if the power of Congress is to be recognized and given effect in the field of labor relations in interstate commerce.

Without pursuing this point further, for our purpose here, we contend that this Court's conclusion in the Garner case, as stated at **346 U. S. 485, l. c. 501**, is controlling, and the Supreme Court of Missouri is entirely in error in brushing it aside and ignoring it, and in failing to accord it the controlling application for which we maintain. This Court stated (Garner case, l. c. 501):

> "We conclude on the basis of the allegations, the petitioners could have presented this grievance to the National Labor Relations Board. The respondents were subject to be summoned before that body to justify their conduct. We think the grievance was not subject to litigation in the tribunals of the State."

This is so, we repeat, regardless of **any** state law it is alleged that petitioners **also** may have violated. The purpose of Congress to give to the N. L. R. B. exclusive, primary jurisdiction cannot be negated or emasculated by procedure as is sought to be imposed by Missouri. Nor can the Missouri Court hold, by its unsupported conclusion, that there is no labor dispute. To do so, we maintain, flies in the face of reason, and every realistic concept of a labor dispute.

Section 2, par. 9, of the N. L. R. A., as amended [U. S. C. A., Title 29, Sec. 152 (9)] defines a "labor dispute" as:

> ". . . **any controversy** concerning terms, tenure, **or conditions of employment** or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange **terms or conditions of employment** . . ." (Emphasis ours.)

This is also essentially the definition of the term to be found in the Norris-LaGuardia Act [U. S. C. A., Title 29, Sec. 113 (c)].

As a matter of fact, as we have stated, the N. L. R. B., in its ruling (101 N. L. R. B., p. 346, No. 87) on the respondent's unfair labor practice charge, held there was no **present** dispute as to the assignment of work. Factually the Board did not rule there was no "labor dispute" as the Missouri Court would have it appear, and as that term is understood between employees and employers, and as defined in the Act.

So we assert that the state court should not be permitted by judicial fiat to declare that there is no labor dispute in

the instant matter and thus seek to assert jurisdiction. The determination of this question is exclusively for the N. L. R. B. and so this Court has held, particularly in the Garner case, supra. It should be remembered that there was no "labor dispute" in the Garner case as stated by this Court in its opinion.

2. (a) **The Supreme Court of Missouri Erred in Entertaining Jurisdiction Because a State Court Has No Jurisdiction and Is Without Authority to Enjoin a Union on Charges Which Relate to Matters Protected or Proscribed by the N. L. R. A., as Amended, and by the L. M. R. A. (1947) at the Request of an Employer in Interstate Commerce, and Such Employer Has No Rights With Respect to Such Conduct, Other Than Those Which Are Justiciable Under the Act.**

(b) **The Language of the Federal Act and Its Legislative History Exclude Action in This Case in a State Tribunal.**

(c) **The Clear and Unmistakable Policy of Congress, as Declared in Sections 7, 13, 10 (a), 10 (j), 10 (k), 10 (l), of the N. L. R. A., as Amended, U. S. C. Title 29, Par. 160 et seq., and Sec. 303 (a) (4) of the L. M. R. A. (1947), Give to the N. L. R. B. the Power to Enforce Any Provision of the Act and This Power " . . . Is Not Effected by Any Other Means of Adjustment or Prevention That Has Been Given or May Be Established by Law or Agreement . . .," Sec. 10 (a).**

(d) **The Facts in This Case Unequivocally Place It Within the Ambit of the Federal Law.**

At this point it may be well to consider the national policy with respect to labor relations in interstate commerce, as declared by Congress, to demonstrate that this policy, and its legislative history, fully supports the contention of petitioner in this case, and to show why the principle of the Garner case applies at bar.

This Court is familiar with the long asserted abuses in the issuing of injunctions in labor cases by both Federal and State courts. It was because of this that Congress passed the Norris-LaGuardia Act in 1934.

The chief, in fact the only, weapon a labor union has to obtain its demands is through the concerted activities of striking and picketing. This weapon has been the constant subject of state attack and limitation. American labor history reveals a sad picture of the abuse of labor injunctions, not infrequently granted, "ex parte"! Mr. Justice Jackson, for the Court, in **International Union, etc., v. W. E. R. B.**, 336 U. S. 245, l. c. 257, stated:

> ". . . The most effective weapon against the struggling labor union was the doctrine that concerted activities were conspiracies and for that reason illegal."

Congress, of course, had this abuse in mind and recognized how easy it was, one way or another, to return to this philosophy of government by injunction. It recognized how a narrow and restricted interpretation of the "purposes or objects" of picketing, or definitions of a "labor dispute" could again, all too easily, open the closed door of the national policy if the views and philosophies of the forty-eight states were permitted to encroach upon the national field in interstate commerce. Hence the declaration by Congress of its clear policy **that labor relations in industries affecting interstate commerce were to be solely regulated and controlled by the Federal Act,** which principle and policy this Court has consistently guarded and affirmed (Garner, Bethlehem, etc., cases, cited, supra, under "Reasons Relied on for Allowance of the Writ," Part VII hereof).

Yet Missouri has asserted that it has the first and primary right to pass on and determine:

> (a) whether the **object** or **purpose** of the strike and consequent picketing is lawful;

b) in accordance with its finding to apply its "restraint of trade" or conspiracy statute as supreme, taking precedence over all federal regulations, machinery and Boards.

We repeat this is contrary to the principle frequently determined by this Court and especially in the Garner case, when it said, 346 U. S. 485, l. c. 501:

"We think the grievance was not subject to litigation in the tribunals of the State."

Consequently, in 1935 when Congress passed the N. L. R. A. (Title 29, Secs. 151-168, C. 372, 49 Stat. 449) in unmistakable terms it evidenced its purpose of entering the field of labor relations in interstate commerce. Section 1 of the Act (1935) sets forth the purposes. After discussing the general background, Congress states (last par. Sec. 1):

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce, and to mitigate and eliminate these obstructions where they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

The above purpose was carried forward and reiterated by the passage of the L. M. R. A., 1947 (U. S. C., Title 29, Sections 151-187, C. 120), where under the designation "Short Title and Declaration of Policy," Sec. 1, the Congressional intent and purpose was again stated as [Sec. 1 (b)]:

"It is the purpose and policy of this Act . . . to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to

> provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other . . . ".

In other words, Congress intended one national policy to be determined and controlled by one national Board instead of permitting forty-eight different and independent interpretations by the respective states. This is buttressed by the Norris-LaGuardia Act, 29 U. S. C. '01-115). The legislative history of the N. L. R. A., as amended, and the L. M. R. A. (1947) reveal this purpose.

Let us here further consider the legislative history of the Act as it pertains to the immediate subjects of this discussion, namely, the **exclusive jurisdiction** of the Board in disputes in industries affecting interstate commerce and the subject of "**jurisdictional disputes**" and boycotts being unfair labor practices.[4]

We find that this **exclusive** jurisdiction of the Board, in the field of alleged unfair labor practices particularly, is repeatedly revealed. The House Report No. 245, p. 331, Legislative History of the N. L. R. A., as compiled by the N. L. R. B., states:

> "As under the present Act, the power of the Board under the amended Act **in the matter of unfair labor practices is exclusive**. . . . The rule of exclusive jurisdiction was developed many years ago by the Supreme Court in order to provide uniformity in matters of national policy under the commerce clause." (Emphasis ours.)

An exception was made as to the union security provision of the "closed shop" in Sec. 13 of the House Bill.

Because of the fact that authority was given to the Board by Sections 10 (j) and 10 (l) to seek injunctive relief, and by Section 303 (b) of the L. M. R. A. (1947),

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[4] See Appendix B hereof.

permitting aggrieved parties to file actions in damages, the Senate felt that the continuation of the word "exclusive" as it appeared in the original Act (1935) might be confusing and should be deleted. However, this in no way changed the intent and meaning of the Act as to the sole jurisdiction of the Board in that area wherein the Board had positive competence and power, such as unfair labor practices.

The Court will find an accurate and clear explanation of this phase in **Amazon Cotton Mill Company v. Textile Workers' Union etc.**, 167 Fed. 2nd 183, where the Fourth Circuit had the question before it and where this Court denied certiorari.[5]

The certain intent and purpose of Congress as we have demonstrated was to pre-empt the field of labor relations in industries affecting interstate commerce and to give to the N. L. R. B. exclusive, primary jurisdiction to hear and determine all conduct denominated as unfair labor practices under Sec. 8 (b) of the Act as amended and Sec. 303 (a) of the L. M. R. A. (1947).

As the instant record shows respondent has specifically alleged certain such unfair labor practices and particularly a jurisdictional dispute and boycott under Sec. 8 (b) (4) (D) of the Act as amended and Sec. 303 (a) (4), L. M. R. A. (1947). This very same jurisdictional dispute between the Machinists and the Millwrights was the example used and discussed by Congress at the time the foregoing word "exclusive" was deleted (see Appendix B).

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[5] In the above case the Fourth Circuit, speaking through Chief Judge Parker, had before it this very question as to the exclusiveness of the Board's jurisdiction being affected by the deletion of the word "exclusive" in the amended Act.

The Court, at l. c. 187, fully examined the reasons for the omission of the word "exclusive" and concluded: ". . . that it was not intended to vest and does not vest jurisdiction in the District Courts in cases of this sort." Of course the same reasoning applies with respect to any court, state or otherwise. The exclusive jurisdiction of the Board to utilize the machinery afforded it by Congress and to enforce the regulations laid down and proscribed by the Act is the point involved.

Senator Taft discussed the basic question of the right to strike (93 Congressional Rec. 3835 [1947]):

> "So far as the bill is concerned we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours and working conditions after proper opportunity for mediation."

In other words, Congress has recognized and given employees through their representatives the right to strike and act concertedly for wages, hours, **terms and conditions of employment.** In the instant case the petitioners assert the right to exercise this right in support of their demand for **certain conditions of employment,** as revealed by their demand on respondent to continue a certain clause in the contract under negotiation (Clause 2, Art. VII, supra). Yet Missouri would interfere and by its determination hold that there is no lawful purpose or object under its law, and thus preclude the Federal Board from exercising its exclusive and primary jurisdiction under the Federal Act of determining this question for itself.

An observation at this point is appropriate concerning the subject of working conditions. A "working condition" or "condition of employment" is not to be so narrowly construed as to destroy or defeat its implication. Certainly what is and what is not such a "condition" under the Federal law is not to be left to the varied definitions of the forty-eight states, as Missouri would seek to do.

"Conditions of employment" necessarily are many and varied. The reasonable relationship of the terms and conditions under which working men desire to work for an employer to their employment cannot be defined by any hard and fast rule. Hard and fast rules have no place in the area of human relationships such as employee and employer. They must be not only flexible, but broad, if

industrial peace is the chief object to be sought. The effort of men to protect their work or gain additional work, even at the expense of others, if peacefully sought, should never be narrowly condemned and removed from the scope of conference, discussion and negotiation, as Missouri would seek to do contrary, we, say, to the Federal policy.

The Seventh Circuit in **Inland Steel Company v. N. L. R. B.**, 170 Fed. 2d 247, discussed "conditions of employment."[6] In this case a pension and retirement plan, voluntarily inaugurated by the company, was the question. Also see **Amazon Cotton Mill Co. v. Textile Workers Union etc.**, 167 Fed. 2nd 183, wherein "conditions of employment" are likewise discussed. In the Amazon case a pension and retirement plan was also involved.

In this connection it must be remembered that Congress has taken over **the field of** labor relations in interstate commerce. This means the **entire area** of such relations, not just a segment or part. Unless Congress has specifically exempted a particular part of this field, or has remained silent on the subject, or has ceded it to state control, the states are excluded and so the cases hold.

Where the public peace and order of a state are transgressed by violence, mass picketing and related conduct, then the traditional right of a state to protect itself under its police power, from such breaches, are and always have been recognized as proper areas of state regulation and control. The instant case does not by any means fall in this restricted area.

Congress has not remained silent in the instant area but has specifically " . . . taken in hand this particular type

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[6] The Inland Steel case involved the refusal of the Company to bargain on the subject of its own, voluntary pension and retirement plan, on the ground ". . . that it is not required to do so under the terms of the Act. It follows then that the issue for decision is—whether pension and retirement plans are part of the subject matter of compulsory collective bargaining within the meaning of the Act."

of grievance . . . " (Garner case). Congress has specifically enumerated certain conduct of employees as unfair labor practices under Section 8 (b) of the Act. Respondent alleges the conduct of petitioners herein as violative of those provisions of the Act (R. pp. 3, 6, 7, 8, Pars. 3, 9, 10, 15, Resps. Compl.).

Therefore, when Congress entered this field and provided regulations, methods, machinery and Boards to effect the regulations, all state regulation and control was necessarily precluded and excluded. This is implicit in the Act. We repeat, Congress has pre-empted this field in interstate commerce. To permit state interference by one means or another, by pretext or strained and narrow processes of reasoning and construction, would be to emasculate the Federal Policy and destroy it as well as to do violence to the Federal supremacy provision of the United States Constitution, Article VI.

To sustain these principles this Court has repeatedly ruled in the cases we have set out, supra, i. e.:

Garner et al. v. Teamsters etc. Union et al.;
Building Trades Council et al. v. Kinard etc.;
Bethlehem Steel Co. v. N. Y. State Labor Board;
International Union etc. v. O'Brien et al.;
La Crosse Tel. Corp. v. W. E. R. B.;
Amalgamated Assoc. Motor Coach Employees etc. v. W. E. R. B.;
Hill v. Florida;

and other cases cited under Part VII of this petition, supra.

Of course the above list is not meant to be all inclusive. There are many more cases to the same effect. The foregoing, we believe, suffices our purpose here.

The **principle** announced in these cases is the exclusion from interference in the federal field. The **emphasis** is

directed **against the intrusion**, not the one who seeks it. A State, a State Labor Board or a State Court are all necessarily included in the prohibition.

This Court, in **Hill v. Florida**, 325 U. S. 538, l. c. 542, held:

> "The Board properly rejected the employers contention that Congress did not intend to subject the 'full freedom' of employees to the eroding process of 'varied and perhaps conflicting provisions of state enactments.' Cf. N. L. R. B. v. Hearst Publications, Inc., etc., 322 U. S. 111."

In Hill v. Florida it was the State of Florida which asserted the right to invade the Federal field by its enactment of a specific law seeking to license union business agents, etc.

In **Bethlehem Steel** it was a State Labor Board. This Court held, at 330 U. S. 767, l. c. 774:

> "But when federal administration has made comprehensive regulations effectively governing the subject matter of the statute, the Court has held that a state regulation in the field of the Statute is invalid even though the particular phases of the subject has not been taken up by the Federal agency. (Cases cited.)"

and at l. c. 776 the Court says:

> "The Federal Board has jurisdiction of the industry in which these employees are engaged and has asserted control of their labor relations in general. . . . We do not believe this leaves room for the operation of the state authority stated."

In **International Union, etc., v. O'Brien**, 339 U. S. 454, 44 L. Ed. 978, 70 S. C. 781, where the right to strike was involved, it was held, l. c. 459:

"Clearly, we reaffirm the principle that if 'Congress has protected the union conduct which the state has forbidden, the state legislature must yield.' That principle is controlling here."

At bar petitioner has consistently contended that Congress has—

(a) "protected" its conduct in exercising its right to strike and to peacefully picket respondent for the object and end sought and, likewise, that Congress has—

(b) proscribed petitioner's alleged conduct as an unfair labor practice (jurisdictional strike and boycott) under Sec. 8 (b) (4) (D) of the Act as amended and Sec. 303 (a) (4) of the L. M. R. A. (1947) as alleged by respondent in its petition.

Hence, we argue that in either event the subject matter is within the area exclusively reserved for determination **in the first instance** by the Federal Board and that Missouri has no right or power to predetermine it.

"Congress has occupied this field and closed it to state regulations." O'Brien case, supra, 339 U. S. 454, l. c. 457.

The Garner case, supra, is completely determinative of petitioner's contention at bar. We repeat what we have previously stated:

"Congress has taken in hand this particular type of grievance when it affects interstate commerce" (346 U. S. 485, l. c. 488). ". . . The power and duty of primary decision lies with the Board, not with us. But it is clear that the Board was vested with power to entertain petitioner's grievance (at bar, respondent's) to issue its own complaint against respondents (at bar, petitioners) and, pending final hearing, to seek, from the U. S. District Court, an injunction to prevent

irreparable injury to petitioners (at bar respondents) while their case was being considered" (346 U. S., l. c. 489).

It may be argued that the case of **Giboney et al. v. Empire Cold Storage & Ice Co.**, 336 U. S. 490, 69 S. C. 684, 93 L. Ed. 834, is in point here. **This we deny!** The Giboney case came to this Court on one single question, namely, did the Fourteenth Amendment of the Federal Constitution (Freedom of Speech) deprive Missouri of its right to hear and determine the issues **there** presented? This Court said "No." The facts on which the Giboney case was heard, admittedly occurred prior to the amended N. L. R. A. and the L. M. R. A. (1947), although the case was decided subsequently. The Union (The Teamsters) were seeking to unionize certain independent ice peddlers in Kansas City, Missouri, and to this end were seeking to prohibit Empire and other ice manufacturers from selling and furnishing ice to these peddlers and thus to compel these manufacturers to aid in the unionization of these peddlers. The Teamsters were enjoined by the state court from continuing this activity. The **single** issue presented to this Court and on which this Court decided was, were petitioners' rights of free speech violated under the Fourteenth Amendment of the United States Constitution? **There was no question or issue involved or presented directly or indirectly challenging the jurisdiction or the right or power of Missouri to hear or determine the issues in the first instance.** There was no National Act even suggested. In fact, no provision of the N. L. R. A. applied!—or was involved. So we say, this case is without merit at bar where the sole question is one of primary jurisdiction under the Federal law and policy to hear and determine certain issues alleged by respondent to be unfair labor practices under the Federal law. In other words, the **same issues** as were determined by this Court in the Garner (and Kinard) cases.

3. **To Permit the Jurisdiction of Missouri Under the Facts Is to Permit the Eroding Away of Federal Authority and the Destruction of the Clear Congressional Purpose of Exclusive Jurisdiction in the N. L. R. B.**

It seems to us that the mere statement of the foregoing, especially after our previous discussion, should be sufficient to justify its assertion. We have fully demonstrated, we think, the exclusive character of the jurisdiction, power and right of the N. L. R. B. in matters such as are involved in this case. The respondent has alleged those powers and has invoked them. Respondent itself has built the fence encompassing and defining the controversy and within the limit of this field respondent must be held. The questions of boycott, jurisdictional dispute, forced work assignment, etc., raised by respondent are within the sole and exclusive competence of the N. L. R. B. to hear and decide in the first instance, exclusive of any state tribunal.

The grievances alleged are in the field of labor relations in interstate commerce, as this Court has said in the Garner case (supra). If this be so then neither Missouri, nor any state, can be permitted to erode away and destroy the Federal law. If Missouri can do what it here seeks to do for the self-asserted reasons it advances, then any state can do the same and the wording, intent and purpose of the Federal Act would be emasculated. The states would determine their own power, jurisdiction and rights in the face of the Congressional purpose and in the teeth of the Constitutional power. As this Court said in Hill v. Florida (supra), "What Congress constitutionally has given the states cannot constitutionally take away."

4. **A Conflict of Laws Exists and the Federal Law Is Supreme Under Article VI of the Constitution of the United States.**

Assuming, for argument's sake, respondent's position to be correct, then, concerning the issues here involved, there is a definite conflict of laws, to-wit:

(a) The N. L. R. A., as alleged, and

(b) The Missouri Restraint of Trade Statute.

The answer then becomes simple, needing no prolonged argument or citation to support it, the Federal law **is supreme and must prevail.** (U. S. Constitution, Article VI.)[7]

THE QUESTION.

The Question Therefore Presented Is Whether the State Court of Missouri, Under the Facts in This Case, Has the Competence to Assume Jurisdiction and to Hear and Determine This Case by Applying State Law in a Labor Dispute in an Industry Affecting Interstate Commerce? Petitioner Says "No."

Under the "Summary Statement of the Matter Involved," Part I hereof, we have set forth the factual background of the question here presented, which, we believe, justifies our answer of "No" to this question.

The Federal law is both an unequivocal and comprehensive assertion of power by Congress to regulate the relations of the parties to this action. This is true whether:

(a) Viewed in the light of petitioner's assertions that they are engaged in lawful concerted activities to achieve their lawful purpose, or

(b) From the viewpoint of the Supreme Court of Missouri that petitioner seeks, by reason of a jurisdictional dispute, and boycott, to compel respondent to violate the Restraint of Trade (Conspiracy) Statute of Missouri.

---

[7] Article VI of the United States Constitution, paragraph 2, is as follows:

"Supreme Law of the Land. This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

In either event the issues fall squarely within the regulatory power of Congress.

The point on which the Missouri Court erred, it seems to us, is in holding:

(a) There is no labor dispute, and

(b) There is no unfair labor practice, because the N. L. R. B. said so! (R. p. 105.)

This is patently wrong and is not the determinative factor. This case, with its allegations of violation of the Federal law, was filed in April, 1952. On April 19, 1952, when respondent obtained its "ex parte" restraining order and injunction, there was no mention or pleading of any Missouri Restraint of Trade Statute! The case was heard in June, 1952, by the State Court over the petitioner's objections that there was no jurisdiction in the State Court and it was determined in October, 1952, by making the "ex parte" restraining order and temporary injunction of the State Court permanent.

After the jurisdiction was thus fully usurped, the incongruous position is now asserted that since it is alleged the N. L. R. B. **in November, 1952** (101 N. L. R. B., p. 346, No. 87), **months later,** held that there was no dispute and no unfair labor practice, **this can be applied retroactively** to justify the wrongful assumption of jurisdiction by Missouri **in April-June, 1952.** This is unbelievable logic and reasoning. We repeat, the N. L. R. B. had original, primary and exclusive jurisdiction, under the law and the facts in this case, as respondent by its actions and conduct has admitted. **The Board's decision did not give it or deprive it of jurisdiction.**

Respondent asserts that the instant subject is not a proper one for negotiation; that it is not related to a "condition of employment"; that it is unlawful; that it seeks to coerce or compel respondent to violate the Missouri Restraint of Trade Statute; that in reality it represents

a jurisdictional dispute between the petitioner (Machinists) and the Millwrights (Carpenters).

Hence the issue is sharply presented—is the subject sought a proper one for negotiation as a "condition of employment" under the Federal law? If it is, as petitioner alleges, and as it has demonstrated, supra, then certainly no one can be heard to complain and no injunction can issue. **Who is to determine and answer this question?** The Federal agency or the State Court?

Under the facts and the pleadings in this case the answer is clear. The Federal law, machinery and regulations must be applied in the first instance. To argue to the contrary is to argue for the complete impotency of the Federal law and regulations because we have here an industry admittedly engaged in interstate commerce over whose labor relations the Federal law has taken direct jurisdiction. The Federal jurisdiction is primary and exclusive as this Court has repeatedly ruled as we have fully shown.

Therefore, if the sought object is determined by the Federal procedures to be a proper one for negotiation, then Missouri must yield to the dominant and supreme law. If the sought object is determined under the Federal procedures to be an improper one, then the N. L. R. B. has power to order these petitioners to cease and desist and it is afforded injunctive facilities under the Act to protect the parties.

Petitioner argues that when Missouri injected its laws and regulations, and determined for itself the lawfulness or unlawfulness of the conduct in question, it violated the controlling authority of the Garner and the many other Federal cases we have cited.

Federal power and authority should not be subjected to the ingenuous attacks of the states in determining in the

first instance whether or not a guaranteed federal right is being exercised for a proper purpose or object. To permit a state to first determine this question for itself would be to destroy the federal power and would do effective violence to any concept of federal pre-emption or power in this field. It would render Sections 8 (b) (4); 10 (a) (j) (k) (l), N. L. R. A., as amended, and Section 303 (a) of the L. M. R. A., 1947, impotent. These sections in particular afford respondent its exclusive remedy.

The holding and ruling of this Court in the Garner case, supra, is completely controlling and decisive here.

Wherefore, your petitioner prays that a writ of certiorari be issued by this Court to the Supreme Court of Missouri directing that Court to certify and send to this Court, for its review and determination, a full and complete transcript of the record and proceedings in Anheuser-Busch, Inc., Respondent, v. Weber et al., Appellants, and that the judgment of the Supreme Court of Missouri be reversed by this Court.

Respectfully submitted,

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APPENDIX A.

The following are the various pertinent sections of the N. L. R. A., as amended, and the L. M. R. A. (1947) (U. S. C., Title 29, Secs. 151-187, c. 120):

Statement of Policy.

Section 1 (b). Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I.

Amendments.

Sec. 101; Findings and Policies.

Section 1. * * *

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial ob-

structions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS.

"Section 2. When used in this Act—

Labor Dispute.

"(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

Rights of Employees.

"Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Union Unfair Labor Practices.

"Section 8 (b). It shall be an unfair labor practice for a labor organization or its agents—

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

"4 (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

"4 (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9;

"4 (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: Provided, that nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act";

TITLE III.

Suits by and Against Labor Organizations, Boycotts and Other Unlawful Combinations.

Section 303 (a). It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or other self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a

refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

TITLE I.

Exclusive Right of Majority Representative.

"Section 9 (a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect; Provided further, that the bargaining representative has been given opportunity to be present at such adjustment.

PREVENTION OF UNFAIR LABOR PRACTICES.

Power of Board.

"Section 10 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise; Provided, that the Board is empowered by agreement with any agency of any State or Territory to cede to such agency

jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

Power of Board to Petition Courts for Temporary Injunctions.

"Section 10 (j). The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

Determination of Jurisdictional Disputes by Board.

"Section 10 (k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted,

or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

Duty of Board to Seek Injunctive Relief Against Certain Strikes and Boycotts.

"Section 10 (l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: **Provided further**, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such

person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: **Provided further**, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

APPENDIX B.

Pertinent References as to Legislative History of the Act and Jurisdictional Strikes. (Footnote 4.)

93 Cong. Rec. 3329; Cong. Rec. Senate 4/9/47; p. 995, Legislative History, published by the N. L. R. B.; **Senator Lucas** read into the Record a letter from Griesedieck Western Brewing Company touching directly on this dispute. The following are the pertinent excerpts:

"February 3, 1947.

"Hon. Scott Lucas
United States Senate
Washington, D. C.

Dear Mr. Lucas:

We have had a jurisdictional dispute for the past 3 weeks at our new bottling plant (Belleville, Illinois), ... (Sets forth parties to dispute, i. e., The Machinists and the Millwrights.)

". . . We would appreciate it very much if you would telegraph or write the following: Mr. Harvey Brown, president, International Association of Machinists, Machinists Building, Washington, D. C.; Mr. William Hatchinson, president, Brotherhood of Journeymen Carpenters & Joiners, Indianapolis, Indiana . . . ."

Letters were written by Sen. Lucas to each of the above parties:

"It has come to my attention that there is a jurisdictional dispute over the erection of bottling machinery in the Griesedieck Western Brewing Company of Belleville, Illinois. . . . I do not hesitate to say that the matter of jurisdictional disputes is one of the things that Congress will probably outlaw when new legislation is written. . . ."

The above William Hutchinson is the same one involved in **U. S. v. Hutchinson,** 312 U. S. 219, l. c. 232, 234, and having to do with the instant dispute between the parties at bar.

Note that this Court, in the Hutchinson case, pertinently observed that since the Norris-LaGuardia Act prohibited the issuance of injunctive relief in a controversy, jurisdictional or otherwise, and thus left the matter to negotiation, etc., that the same conduct thus permitted could not be the subject of criminal sanctions under the Sherman Anti-Trust Act.

This is what petitioner herein contends, subject to the amendments of the N. L. R. A. as they appear in Section 8 (b) (4) (D) of the amended Act.

These amendments make a jurisdictional dispute an unfair labor practice and hence within the sole jurisdiction of the N. L. R. B. to whom unfair labor practices have been exclusively awarded.

Senator Morse, 93 Cong. Rec. 1890-1; Cong. Rec. (Senate) 3/10/47, pp. 950-954, Legislative History, published by the N. L. R. B., in discussing Sec. 8 (b) (4) (D), said:

> "I have attempted to define as unfair labor practices certain types of strikes, **jurisdictional disputes and secondary boycotts.** These provisions are in Sec. (4) (D) of the bill . . .." (Emphasis ours.)

Senator Taft, 93 Cong. Rec. 3954; Cong. Rec. (Senate) 4/23/47, p. 1012, Legislative History published by the N. L. R. B., states:

> "The fourth type of unfair labor practice is the ordinary jurisdictional dispute in which two unions compete for work on a particular job."

Senator Ellender, 93 Cong. Rec. 4255-6; Cong. Rec. (Senate) 4/28/47, pp. 1056-7-8 Legislative History published by the N. L. R. B.

Senator Ball, 93 Cong. Rec. 2377; Cong. Rec. (Senate) 5/13/47, p. 1524 Legislative History published by the N. L. R. B., Senator Ball stated:

> "The pending bill makes boycotts and strikes (jurisdictional) unfair labor practices, directs the N. L. R. B. to go into court and obtain injunctions stopping them and gives the injured parties the right to sue for damages actually sustained."

The legislative history of the Act is replete with testimony and declarations, of which the foregoing are but a few examples, of the Congressional intent and purpose to make jurisdictional disputes, as in the case at bar, unfair labor practices within the ambit of Federal regulation by the Act and within the sole jurisdiction of the N. L. R. B.

ued. Feb, 2-3, 1955

Office - Supreme Court, U. S.
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HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

(7)

OCTOBER TERM, 1954.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REED, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation, Respondent.

No. 97.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR PETITIONERS.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REED, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, Petitioners, vs. ANHEUSER-BUSCH, INC., a Corporation, Respondent.	No. 97.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR PETITIONERS.

I.

OPINION OF THE SUPREME COURT OF MISSOURI.

The opinion of the Supreme Court of Missouri is reported as Anheuser-Busch, Inc., v. Lloyd Weber et al., 265 S. W. (2nd) 325, ... Mo. ... (not yet officially reported),

and is dated February 8, 1954. It is herein set out (R. pp. 104-119).

The motion for a rehearing (R. pp. 120-123) was overruled on March 8, 1954 (R. p. 123). Per Curiam Opinion was filed on March 8, 1954 (R. pp. 124-126), and Stay of Mandate was ordered on March 12, 1954 (R. p. 127).

II.

JURISDICTION.

The Jurisdiction of this Court is invoked under Title 28, U. S. C. A., Section 1257 (3) (June 25, 1948, c. 646, 62 Stat. 929). There are two substantial Federal questions involved: (1) the intrusion by the State of Missouri into a labor dispute in an industry affecting interstate commerce, a subject pre-empted by Congress and over which the National Labor Relations Board has exclusive jurisdiction; (2) the question of the supremacy of the Federal law under Article VI of the Constitution of the United States.

These questions were raised in the first instance in the trial court by petitioners' "Separate Motion to Dismiss for Want of Jurisdiction . . ." (R. p. 11); again in their "Return to the Order to Show Cause and Answer" (R. pp. 13, 105), followed also in their "Motion for a New Trial" (R. p. 87), and raised in their "Motion to Modify" the decree of the trial court (R. p. 83), and in their "Motion to Set Aside the Finding and Decree Herein and to Dismiss Plaintiff's Complaint for Want of Jurisdiction" (R. p. 85).

These questions were briefed and argued in the Supreme Court of Missouri (R. pp. 104-114) (Opinion of the Missouri Supreme Court).

III.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED.

The National Labor Relations Act, as amended, and the Labor Management Relations Act (1947), Title 29, U. S. C. A., Secs. 141-187, c. 120. Reference is here made to the sections of the Act and the U. S. C. section is indicated in parentheses.

Statement of Policy, Sec. 1 (b) (U. S. C., Sec. 141); Title I, Amendments, Sec. 101, Findings and Policies, Sec. 1 (last par. U. S. C., Sec. 151).

Definitions, Sec. 2—Labor Dispute (9) (U. S. C., Sec. 152 (9)).

Rights of Employees, Sec. 7 (U. S. C., Sec. 157).

Unfair Labor Practices, Sec. 8 (b) 4, 4A, 4B, 4D (U. S. C., Sec. 158 (b) 4, 4A, 4B, 4D).

Title III, Suits by and against Labor Organizations, Boycotts, and Other Unlawful Combinations, Sec. 303 (a), 1, 2, 4 (U. S. C., Sec. 187 (a) 1, 2, 4).

Title I, Exclusive Right of Majority Representative, Sec. 9 (a) (U. S. C., Sec. 159 (a)).

Prevention of Unfair Labor Practices, Power of the Board, Sec. 10 (a) (U. S. C., Sec. 160 (a)).

Power of Board to Petition Courts for Temporary Injunction, Sec. 10 (j) (U. S. C., Sec. 160 (j)).

Determination of Jurisdictional Disputes by Board, Sec. 10 (k) (U. S. C., Sec. 160 (k)).

Duty of Board to Seek Injunctive Relief Against Certain Strikes and Boycotts, Sec. 10 (l) (U. S. C., Sec. 160 (l)).

United States Constitution, Article VI.

The foregoing citations are set out verbatim in Appendix A.

IV.

THE QUESTION.

The question presented is whether the State Court of Missouri, under the facts in this case, has the competence to assume jurisdiction in a labor dispute in an industry affecting interstate commerce where such jurisdiction is in conflict with and intrudes upon the National labor relations policy and statutory scheme.

V.

STATEMENT OF THE CASE.

This is a labor case arising out of a dispute or controversy between parties in an industry admittedly in interstate commerce within the meaning of the Act (R. p. 22), involving the retention in a collective bargaining contract of a certain clause of a prior negotiated contract. The question of the exclusive jurisdiction of the National Labor Relations Board is squarely presented.

Respondent, Anheuser-Busch, Inc. (plaintiff below), is admittedly engaged in interstate commerce (R. p. 22) in the business of ". . . manufacturing and selling beer, yeast . . . and other commodities," with its principal place of business in the City of St. Louis, Mo. It employs approximately 6,000 persons in its St. Louis plant (R. p. 22) of whom about 220 are members of the International

Association of Machinists, District No. 9, petitioners herein (defendants below) (R. p. 104).

Petitioners have for approximately 25 years been recognized by respondent as the exclusive bargaining representative of respondent's employees in its St. Louis plant who are employed as machinists (R. p. 24). Petitioners were certified as such exclusive bargaining representative by the National Labor Relations Board (hereinafter referred to as the N. L. R. B. or the Board) on March 25, 1948 (R. p. 25).

In 1951 petitioners gave due and timely notice under the Labor Management Relations Act, 1947 (hereinafter referred to as the L. M. R. A., 1947), and likewise under the provisions of the then existing contract between the parties of their desire to amend and modify the said contract in certain particulars (R. pp. 15, 69). The respondent gave no notice of its desire to terminate the contract or to modify it.

Negotiations between the parties began on December 19, 1951 (R. p. 5). The respondent then insisted on the deletion of Section 2 of Article VII of the said contract.[1] On

[1] The said Article VII in its entirety is as follows:

"Article VII, Section 1. Jurisdiction: The employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed by employees within the bargaining unit as set forth in Section 1 of Article 1 of this agreement, either under its own supervision or such other supervision as the employer shall select."

"Section 2: In the event it becomes necessary to have such work hereinbefore described contracted out, the employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations" (R. p. 4).

March 24, 1952, petitioners filed their unfair labor practice charge against the respondent with the N. L. R. B. alleging refusal on the part of the respondent to bargain in good faith. (Said charge was amended on April 18, 1952.) (R. p. 70.) The Regional Director for the 14th Region of the Board refused to issue a complaint, which refusal, on appeal, was sustained by the General Counsel of the Board. (See Administrative Decisions of General Counsel, N. L. R. B. case No. 766, August 17, 1953, par. 12,776, CCH Labor Law Service.) After negotiations broke off because of respondent's insistence on the deletion of the said Section 2 of Article VII, and after the Federal Mediation and Conciliation Service was notified, a strike vote was taken on April 6, 1952, the vote being 206 to 14 in favor of a strike. Petitioners, on April 7, 1952, struck and peacefully picketed the premises of the respondent (R. p. 6). The said picketing was peaceful in all respects (R. pp. 16; 44-47; 48-51; 51-54; 54-55; 70, 110).

On April 8, 1952, respondent filed with the Board (14th Region, St. Louis) unfair labor practice charges against the petitioners alleging that petitioners were violating Section 8 (b) (4) (D) of the N. L. R. A., as amended[2] ". . . with the object and purpose of forcing and requiring Anheuser-Busch, Inc., and those contracting with it for the purpose of performing construction work, to assign and cause to be assigned, particular work to employees who are members of and represented by other labor organizations . . .". A notice of hearing was issued by the N. L. R. B. in accordance with Section 10 (k) of the Act, and after the hearing of said alleged charge on July 8, 1952, the Board on November 18, 1952, quashed said notice of hearing, sustaining petitioners' motion ". . .

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[2] Section 8 (b) (4) (D) and other pertinent sections as well as pertinent sections of the L. M. R. A. (1947) of the Act appear in Appendix A.

to quash the notice of hearing on the ground that the evidence did not establish a violation of Section 8 (b) (4) (D) as alleged in said charge" (101 N. L. R. B., p. 346, No. 87).

Contemporaneously with the filing of its unfair labor practice charge, and on April 19, 1952, respondent filed its petition and complaint in the Circuit Court of the City of St. Louis, Missouri (R. p. 2), and its amendment by interlineation on April 30, 1952, alleging violation of the Missouri Restraint of Trade (Conspiracy) Statute [R. p. 8, par. 15 (a), respondent's complaint]. The complaint sought to enjoin petitioners from picketing the premises of the respondent in the City of St. Louis (R. p. 2 etc.). The strike and picketing resulted from unsuccessful negotiations directly between the primary parties and was based solely, as stated above, on respondent's insistence on the deletion of the said clause (Section 2, Article VII) which appeared in the prior contract between the parties.

For some time there had been a dispute between petitioners and the Millwrights A. F. L. (Carpenters' Union) as to which Union should perform certain work. To protect the work contended for by petitioners, Section 2 of Article VII was inserted in the contract after lawful negotiation and consultation.

The object and purpose of the picketing had to do with the terms and conditions of employment of petitioners concerning the protection and assurance of the work contended for by the petitioners.

On April 19, 1952, and prior to the amendment by interlineation on April 30, 1952, alleging the violation of the Missouri Restraint of Trade Statute, the trial court on the same date, to-wit, April 19, 1952, without notice or hearing, *ex parte*, issued its restraining order and injunction, enjoining petitioners from any and all picketing, which injunction

was made final (R. p. 83) and affirmed by the Supreme Court of Missouri (R. pp. 104, 119).

In its original complaint to the State Court respondent charged that petitioners' strike and picketing was for the purpose of furthering a jurisdictional dispute between the petitioners and the Millwrights (A. F. L.), and constituted a secondary boycott, and as such was violative of certain sections of the N. L. R. A., as amended, and of the L. M. R. A. 1947, to-wit:

> (Par. 9) ". . . and therefore constitutes, as to plaintiff, a secondary boycott, and is in violation of Section 8 (b) (4) (A) and (B) of the National Labor Relations Act, as amended, and Section 303 (a) (1) and (2) of the Labor Management Relations Act 1947, and is an attempt by the Machinists, using coercion on plaintiff, to illegally establish the Machinists as bargaining representative for other employees of other employers for whom the said Machinists have not been certified as bargaining representative by the National Labor Relations Board; and also an attempt to coerce other employers beyond the control of plaintiff to award such work to said Machinists and to unlawfully extend the bargaining rights of said Machinists" (Par. 9, Resp's Complaint, R. pp. 6-7).
>
> (Par. 10) ". . . and therefore constitutes a jurisdictional dispute and is in violation of Section 8 (b) (4) (D) of the National Labor Relations Act, as amended, and Section 303 (a) (4) of the Labor Management Relations Act, 1947" (Par. 10, Resp's Complaint, R. p. 7).
>
> (Par. 15) "Said conduct and activity referred to in Paragraph 14 constitutes a secondary boycott under the common law of the State of Missouri, **and in addition**, is in violation of Section 8 (b) (4) (A) of the

National Labor Relations Act, as amended, and Section 303 (a) (1) of the Labor Management Relations Act 1947." (Emphasis ours.) (Par. 15, Resp's Complaint, R. p. 8.)

By the aforesaid amendment of April 30, 1952, and after the issuance by the trial court of the "ex parte" injunction respondent, for the first time, alleged that petitioner's conduct was also violative of the Missouri Restraint of Trade Statute, R. S. 1949, Sec. 416.010, having to do with combinations in restraint of trade (R. p. 8, Par. 15a, Resp's Complaint).

On the 30th day of April, 1952, respondent's cause was removed by petitioners to the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri on the grounds that the state court had no jurisdiction in the matter. The said cause was subsequently remanded by said Court on the 6th day of June, 1952, because the said United States District Court had no power to grant relief.

In due course, on the 10th day of June, 1952, petitioners filed in the State Court their "Separate Motion to Dismiss for Want of Jurisdiction and Failure to State a Cause of Action," and also filed their "Separate Return to the Order to Show Cause and Answer of Defendants" (Petitioners) (R. pp. 11-17).

On the 26th day of June, 1952 (R. p. 19), this matter was heard by the trial court, and on the 3rd day of October, 1952, the trial court overruled the petitioners' (defendant's) Separate Motion to Dismiss for Want of Jurisdiction and Failure to State a Cause of Action, and on said day entered its decree, finding for the respondent and against petitioners, granting respondent a permanent injunction (R. pp. 72-82; 83).

From the finding and decree of the trial court, petitioners appealed to the Supreme Court of Missouri, which Court on the 8th day of February, 1954, entered its decision and judgment affirming the finding and decree of the trial court. Motion for rehearing was overruled by the Supreme Court of Missouri by per curiam opinion on the 8th day of March, 1954 (R. p. 124), and Stay of Mandate was granted on the 12th day of March, 1954, for an indefinite time, i. e., until the ruling by this Court on the petition for a Writ of Certiorari (R. p. 127).

The said petition for issuance of a Writ of Certiorari by this Court, directed to the Supreme Court of Missouri, was granted by this Court on October 14, 1954 (R. p. 128).

VI.

SUMMARY OF ARGUMENT.

A state court has no authority or power to restrain peaceful concerted activity in an industry affecting interstate commerce where such activity is protected or proscribed by the N. L. R. A., as amended, and by the L. M. R. A. (1947). The lawfulness or unlawfulness of the petitioners' activity is for the National Labor Relations Board to determine in the first instance. It is not for a state court to usurp this right by substituting for the Board its own judgment as to what is lawful or not lawful under Federal law. The lack of authority of the state court is not dependent upon a judicial determination in these proceedings that the petitioners were engaged in a "protected" activity, but flows from the possible presence of such protected rights and the correlative prohibitions which are within the exclusive province of the N. L. R. B. to investigate and decide.

The respondent can find no justification for state jurisdiction by merely alleging a conclusionary assertion that petitioners are violating a state "Restraint of Trade" Statute. This case by no means can be said to be taken completely from out the competence of the Federal Act, machinery and statutory scheme. The respondent recognized the Federal authority when it pleaded its case by alleging the acts of petitioners as being unfair labor practices under the Federal Act, and specifically and meticulously set them forth. The power in the first instance to determine this fact must rest with the Federal Board and not the state court.

If it can be said by a last minute, self-serving assertion, a state Restraint of Trade Statute has been violated, and for that reason the case is not within the Federal juris-

diction and statutory scheme, then it is clear that no exclusive Federal authority in this field can be maintained. In any event there is no evidence at bar which factually shows any restraint of trade, let alone a substantial restraint, which the law requires. The whole plan of respondent in this case was and is to seek to avoid federal jurisdiction by means which should not be tolerated.

The traditional and recognized right of a state to assert jurisdiction under its police power is not here in issue, nor is such ground claimed by respondent. The picketing in all respects was orderly and peaceful (R. pp. 16, 44-47, 48-51, 51-54, 54-55, 70, 110).

The Garner (346 U. S. 485) and the Kinard (346 U. S. 933) cases are controlling.

The National labor relations policy as declared by Congress and as reflected in the legislative history of the Act fully sustains petitioners' contention that the state court had no jurisdiction in this labor dispute.

VII.

ARGUMENT.

1. The Supreme Court of Missouri Is in Error in Holding That the Cases of Garner et al. v. Teamsters Union et al., 346 U. S. 485, 98 L. Ed. 161; Building Trades Council et al. v. Kinard Construction Company, 346 U. S. 933, 98 L. Ed. 236 (Decided January 18, 1954, No. 48), Are Not Applicable and Controlling in This Case.

As we read the Garner case we deem it dispositive of the instant matter, especially if the spirit and intent of that case and **the principle** it announces is followed and no strained or unnatural construction is given it. We think the Supreme Court of Missouri did just that, apparently seeking to evade the impact of the Federal law and to usurp for itself control and regulation which we believe cannot be permitted.

The Missouri Court seeks to brush aside and to ignore this Court's holding in the Garner case by stating: "In the Garner case . . . (and others cited by petitioner) . . . unfair labor practices were squarely in issue, and jurisdiction in those cases was in the National Labor Relations Board under par. 160 (a) of the L. M. R. A. 1947" (R. 117), thus inferring that there were no unfair labor practices in the case at bar and hence the Garner case cannot control! Yet we say that there can be no more definite and certain allegation of unfair labor practices than respondent has made in this case and has squarely put in issue and by which it is bound. Therefore, under the facts, it is indeed a strained reasoning by the Missouri Court that no unfair labor practice exists in the instant matter because, says the Missouri Court, the opinion of the N. L. R. B. in respondent's unfair labor practice charge case so states. **This we flatly deny.**

It must be remembered that the N. L. R. B. has the **primary and exclusive** right to determine in the first instance the existence of a labor dispute, its materiality, and whether there is an unfair labor practice under the Federal law. This is elementary. No state court has a right to decide these factors for itself—one way or another, as the Missouri Court seeks to do.

The Board exercised its exclusive jurisdiction when invoked by respondent. The Board then had the unquestioned right to decide the matter. It quashed the notice of hearing on the Union's motion, which in effect dismissed the charge. Decision by the Board does not create or destroy jurisdiction. This Court, in **Bethlehem Steel Company v. N. Y. State Labor Board**, 330 U. S. 767, l. c. 775, has appropriately held:

> "The power to decide a matter can hardly be made dependent on the way it is decided."

The Board **did not decide** that it had no jurisdiction but rather that under the evidence presented there was no basis for respondent's charge, that there was no **present** demand for assignment of work such as is contemplated by Section 8 (b) (4) (D) of the Amended Act. A reading of the Board's decision, **101 N. L. R. B. 346 (No. 87)**, demonstrates clearly that there is no foundation in fact for the Missouri Court's conclusion and holding. There are **other sections** of the Federal law also alleged by respondent to have been violated by petitioner, which the Board has had no opportunity to determine or even to consider. The gravamen of respondent's complaint, as its petition shows, and particularly Pars. 3, 9, 10 and 15 (R. pp. 3, 6, 7, 8), is that the whole controversy is based on a jurisdictional dispute of long standing with the Millwrights (Carpenters). This question is clearly for the determination of the N. L. R. B. on a proper presentation to it. [N. L. R. B. as amended, Sec. 8 (b) (4) (D); Sec. 303 (a) (4), L. M. R. A. 1947.] (See Appendix A.)

This Court squarely held, in the Garner case, **the principle** for which we maintain, when it stated:

> "Congress has taken in hand this particular type of grievance when it affects interstate commerce" (346 U. S. 485, l. c. 488).
>
> " . . . The power and duty of primary decision lies with the Board, not with us. But it is clear that the Board was vested with power to entertain petitioners' grievance, to issue its own complaint against respondents and, pending final hearing, to seek from the U. S. District Court an injunction to prevent irreparable injury to petitioners while their case was being considered" (346 U. S., l. c. 489).

The question propounded by this Court, and applicable here, is:

> " . . . whether the State, through its courts, may adjudge the same controversy and extend its own form of relief?" (346 U. S., l. c. 489).[3]

We aver that the nature or character of the particular state law, which is invoked to sustain state jurisdiction, is of no moment except to maintain and preserve the public peace from violence.

Certainly there is nothing sacrosanct about a state "Restraint of Trade Statute" which gives it dominance or precedence over Federal authority or power, any more than a state labor law. Both must yield if the power of Congress is to be recognized and given effect in the field of labor relations in interstate commerce.

Prof. Archibald Cox of Harvard University Law School, in his recent article, "Federalism in Labor Law" (Harvard

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[3] Also see:

La Crosse Telephone Corp. v. W. E. R. B., 336 U. S. 18, 93 L. Ed. 463, 69 S. C. 379;

Amalgamated Assoc. of Motor Coach Employees, etc., v. W. E. R. B., 340 U. S. 383, 95 L. Ed. 364, 71 S. C. 359.

Law Review, Vol. 67, No. 8, pp. 1307-1333, June, 1954), discusses the instant problems and in fact this very case, and makes some observations in which we believe this Court will be interested.

We contend, of course, that the instant "subject" or "object" of the strike here involved is a proper one for the exercise of employees' concerted activities. At least its propriety is to be determined in the first instance by the Federal authority.

Certainly the **national policy** is to encourage the negotiated adjustment of differences between labor and management. To permit the forty-eight states to assert jurisdiction and to determine **in the first instance** what is and what is not such a proper "subject" or "object" of protected or unprotected concerted activity at the very least interferes with, if it does not actually destroy, the national policy.

The "subject" or "object" must be clearly distinguished from the "means or methods or conduct" used and employed. These latter, as in the Briggs-Stratton case, International Union v. Wisconsin Employment Relations Board, 336 U. S. 245, were held by this Court to be a proper subject of state authority. The Briggs-Stratton case involved a series of twenty-six unannounced "meetings." In reality it was not a strike at all but a "method or means" rather than a "subject or object" employed by a union to obtain its end, however legal that end may be. It was, as the union described it, a "new technique" in labor-management relations.

At l. c. 254 of the Briggs-Stratton case, supra, this Court said:

> "There is no existing or possible conflict or overlapping between the authority of the Federal or State Boards, because the Federal Board has no authority,

either to investigate, approve or forbid the Union **conduct** in question. This **conduct** is governable by the State or it is entirely ungoverned." (Emphasis ours.)

Prof. Cox in his article, discussing International Union v. O'Brien, 339 U. S. 454, l. c. 456, 457—a case involving the Michigan strike control law and its application to peaceful strikes for higher wages—stated:

> "The same or parallel reasoning is applicable **to any peaceful strike arising out of a grievance or contract negotiations. With small modifications it could be invoked in the case of strikes for other objectives.**" (Emphasis ours.) (Cox article, l. c. 1310.)

We assert that the case at bar presents a question as to whether or not the union has a right to negotiate and discuss the matter of the **retention** in a contract of a clause which had already been negotiated and decided upon and appeared in the existing contract, and to this end to insist on such **retention** by engaging in concerted activities protected by Section 7 of the Act. For, as Prof. Cox stated in discussing the O'Brien case:

> "The implied conclusion that Congress has removed all 'concerted activities' from control by the states is confirmed by the closing paragraph of the opinion, in which Mr. Chief Justice Vinson answered the contention of the state authorities that their action was sustained by the Briggs-Stratton case. **'Clearly we reaffirmed the principle that if Congress has protected the Union conduct which the state has forbidden—the State legislation must yield.'** That principle is controlling here." (Emphasis ours.) (Cox's article, supra, l. c. 1310.)

It is our purpose to squarely meet the issues and not to avoid or evade any. We believe we have done so. Prof.

Cox makes specific reference, at l. c. 1329-1331 of his article, supra, to anti-trust laws. For the Court's convenience we here set forth the author's observations in this regard. At l. c. 1329, commenting on anti-trust laws, he observes:

> " . . . Since the antitrust laws are statutes of general application directed primarily toward the preservation of free competition in product markets, there is considerable plausiblity to the argument that enforcement is permissible because the law does not intrude upon the field of labor-management relations. In **Anheuser-Busch, Inc., v. Weber**, the company sought an injunction against picketing by the International Association of Machinists which was an outgrowth of the ancient jurisdictional dispute with the Millwrights' Union. In this instance IAM sought to extend its jurisdiction by inducing the company to include (retain) in a collective agreement covering several hundred machinists employed in the brewery a provision binding the company to let contracts involving plant expansion only to contractors who had collective bargaining agreements with IAM. The Missouri court enjoined the picketing on the ground that the concerted activities were 'not a labor dispute or an unfair labor practice, but . . . coercive tactics restraining freedom of trade, an internal affair over which this state has "traditionally exercised control."' " (Parenthesis ours.)

Prof. Cox measures the instant case and the holding of the Missouri Court in the light of the Garner case and reaches conclusions consistent with ours and which we have continuously asserted:

> "The decision seems inconsistent with the **Garner** case and contrary to the requirements of sound labor policy. Every effective strike aimed at spreading

union organization or achieving conventional economic demands results in **some** restraint of trade because it excludes the employer from the market until he yields. Unless the purpose or effect is to fix market price to the detriment of the consumer, the legality of such a restraint depends upon a test of 'reasonableness.' To say that the statute condemns only 'unlawful' combinations turns the inquiry back into the common law analysis discussed above; it results, therefore, in a decision of labor policy. To judge the reasonableness of the restraint directly involves appraising the union's justification in terms of the effect on union organization and collective bargaining. The **Anheuser-Busch** opinion held the restraint unlawful on this ground:

" 'Under the terms as above sought to be imposed by the Union, persons employed by or seeking to work for the above construction contractors in moving, erecting or installing machinery in St. Louis area breweries would be compelled to forego representation by their present bargaining agent, the Millwrights' Union . . . and become affiliated with the Machinists' Union in order to retain their employment with such contractors . . . '

"**Where the underlying issue is made to turn on balancing the interests of employers, employees, and unions in organization or collective bargaining, the states should be no more free to apply antitrust laws than statutes or court decisions avowedly based upon those considerations.**" (Emphasis ours.)

We must remember that the essential interest, purpose and object in this case is to further the advantage of the Machinists. This is so whether we attribute this to selfish ends or otherwise. If the end sought constitutes an unfair labor practice by employees under Section 8 (b) of the

Act then we say its regulation is exclusively under federal power. However, it is sure that petitioners' object was **not to restrain trade in the true sense in which "restraint of trade" is considered.** The evidence reveals no actual restraint, let alone any substantial restraint which the law requires to be shown in any case involving this doctrine. (See U. S. v. Hutcheson, 312 U. S. 219.) We respectfully assert that to permit the present evasive tactics employed by the Missouri Court in reaching its decision that the activity in question was not and is not a labor dispute, is to indulge in pure fiction and empty "legal labels." This is emphasized when the Missouri court held (R. p. 112) that the picketing was effected by an "agreement and combination in restraint of trade" and that this "combination" constituted a "local transportation" combination. Of course, the Machinists have no "transportation monopoly" in any fair sense of the term, nor was there **any** evidence of any such a "combination" nor of any restraint of trade.

So we say the Missouri Court has deliberately sought to invade the pre-empted field over which Congress has given the National Labor Relations Board exclusive jurisdiction either because the concerted activity of the petitioners is protected under Section 7 of the Act or because it is proscribed under other sections. [Sec. 8 (b).]

Without pursuing this point further, for our purpose here, we contend that this Court's conclusion in the Garner case, as stated at **346 U. S. 485, l. c. 501,** is controlling, and the Supreme Court of Missouri is entirely in error in brushing it aside and ignoring it, and in failing to accord it the controlling application for which we maintain. This Court stated (Garner case, l. c. 501):

> "We conclude on the basis of the allegations, the petitioners could have presented this grievance to the National Labor Relations Board. The respondents

were subject to be summoned before that body to justify their conduct. We think the grievance was not subject to litigation in the tribunals of the State."

This is so, we repeat, regardless of **any** state law, restraint of trade or otherwise, it is alleged that petitioners **also** may have violated. The purpose of Congress to give to the N. L. R. B. exclusive, primary jurisdiction cannot be negated or emasculated by procedure as is sought to be imposed by Missouri. Nor can the Missouri Court hold, by its unsupported conclusion, that there is no labor dispute. To do so, we maintain, flies in the face of reason, and every realistic concept of a labor dispute.[4]

Section 2, par. 9, of the N. L. R. A. as amended [U. S. C. A., Title 29, Sec. 152 (9)] defines a "labor dispute" as:

> ". . . **any controversy** concerning terms, tenure, **or conditions of employment** or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange **terms or conditions of employment** . . ." (Emphasis ours.)

This is also essentially the definition of the term to be found in the Norris-LaGuardia Act [U. S. C. A., Title 29, Sec. 113 (c)].

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[4] The following cases support our contention herein expressed and we believe are in point on the subject:

International Rice Mill Co. v. N. L. R. B., 341 U. S. 665, 71 Sup. Ct. 961, 95 L. Ed. 1277;

Rice v. Santa Fe Elev. Corp., 331 U. S. 218, 91 L. Ed. 1447, 67 S. C. 1146;

Direct Transit Lines v. Local Union, etc., 199 Fed. 2d 89 (6th Cir.) (also on second motion to remand, U. S. Dist. Ct., West Dist. of Mich., 22 Lab. Cases, C. C. H., par. 67072, p. 81947).

Capital Service, Inc., v. N. L. R. B., 204 Fed. 2d 848 (9th Cir.), 347 U. S. 501, 98 L. Ed. 594;

California Assoc. of Employers v. Building and Construction Trades Council, 178 Fed. 2d 175 (9th Cir.);

Amalgamated Assoc. of Motor Coach Employees v. Dixie Motor Coach Corp., 170 Fed. 2d 902 (8th Cir.).

As a matter of fact, as we have stated, the N. L. R. B., in its ruling (101 N. L. R. B., p. 346, No. 87) on the respondent's unfair labor practice charge, held there was no **present** dispute as to the assignment of work. Factually the Board did not rule there was no "labor dispute" as the Missouri Court would have it appear, and as that term is understood between employees and employer, and as defined in the Act.

This Court has had a phase of the instant case before it in U. S. v. Hutcheson et al. (1941), 312 U. S. 219. This was a criminal proceeding wherein the defendant, Hutcheson, president of the Carpenter's Union, was indicted for violation of the Sherman Anti-trust Act on facts arising out of the very same jurisdictional dispute which respondent alleges in the case at bar, namely, the Millwrights (Carpenters) and the International Association of Machinists, the petitioners herein.

This Court held that a jurisdictional dispute was involved and that under the Clayton Act and the Norris-LaGuardia Act the congressional will and national policy withdrew the dispute from injunctive relief processes and since this cannot be done neither can the conduct thus protected **be made the subject of a criminal proceeding**. We argue this court in the Hutcheson case, in principle, found that the instant subject or object **to be a labor dispute** to be dealt with under law pertaining to labor disputes. At l. c. 232, Mr. Justice Frankfurter, speaking for the Court, said:

> "In so far as the Clayton Act is concerned we must therefore dispose of this case as though we had before us precisely the same conduct on the part of the defendants in pressing claims against Anheuser-Busch for increased wages, or shorter hours, or other elements of what are called working conditions. The fact that what was done was done in a competition

for jobs against the Machinists rather than against, let us say, a company union is a differentiation which Congress has not put into the federal legislation and which therefore we cannot write into it."

This Court further observed at, l. c. 234:

"Congress in the Norris-LaGuardia Act has expressed the public policy of the United States and defined its conception of a 'labor dispute' in terms that no longer leave room for doubt. Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc., 311 U. S. 91 (7 LRRM 276) * * * Such a dispute, Sec. 13 (c) provides, 'includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee' (Note No. 4).

Note No. 4—' Three years later, in the National Labor Relations Act, Congress gave similar breadth to the definition of a labor dispute. Act of July 5, 1935, 49 Stat. 448, 450, 29 U. S. C., Sec. 152 (9)."

It is clear therefore that this court in 1941 recognized that the instant dispute was in reality a labor dispute and as such involved a controversy over "terms and conditions of employment."

This is our contention at bar and this being so the determination of whether the dispute is protected under Sec. 7 of the Act or is proscribed under Sec. 8 (b) of the Act is for the exclusive competence of the National Board. This is what this court has repeatedly held and particularly in the Garner case, supra. It should be remembered that even so there was no "labor dispute" in the Garner case as stated by the court in its opinion.

2. (a) **The Supreme Court of Missouri Erred in Entertaining Jurisdiction Because a State Court Has No Jurisdiction and Is Without Authority to Enjoin a Union on Charges Which Relate to Matters Protected or Proscribed by the N. L. R. A., as Amended, and by the L. M. R. A. (1947) at the Request of an Employer in Interstate Commerce, and Such Employer Has No Rights With Respect to Such Conduct, Other Than Those Which Are Justiciable Under the Act.**

(b) **The Language of the Federal Act and Its Legislative History Exclude Action in This Case in a State Tribunal.**

(c) **The Clear and Unmistakable Policy of Congress, as Declared in Sections 7, 13, 10 (a), 10 (j), 10 (k), 10 (l), of the N. L. R. A., as Amended, U. S. C. Title 29, Par. 141 et seq., and Sec. 303 (a) (4) of the L. M. R. A. (1947), Give to the N. L. R. B. the Power to Enforce Any Provision of the Act and This Power " . . . Is Not Effected by Any Other Means of Adjustment or Prevention That Has Been Given or May Be Established by Law or Agreement . . .," Sec. 10 (a).**

(d) **The Facts in This Case Unequivocally Place It Within the Ambit of the Federal Law.**

At this point it may be well to consider the national policy with respect to labor relations in interstate commerce, as declared by Congress, to demonstrate that this policy, and its legislative history, fully supports the contention of petitioners in this case, and to show why the principle of the Garner case applies at bar.

This Court is familiar with the long asserted abuses in the issuing of injunctions in labor cases by both Federal and State courts. It was because of this that Congress passed the Norris-LaGuardia Act in 1934.

The chief, in fact the only, weapon a labor union has to obtain its demands is through the concerted activities of striking and picketing. This weapon has been the constant subject of state attack and limitation. American labor history reveals a sad picture of the abuse of labor injunctions, not infrequently granted, "ex parte"! Mr. Justice Jackson, for the Court, in **International Union, etc., v. W. E. R. B.**, 336 U. S. 245, l. c. 257, stated:

> ". . . The most effective weapon against the struggling labor union was the doctrine that concerted activities were conspiracies and for that reason illegal."

Congress, of course, had this abuse in mind and recognized how easy it was, one way or another, to return to this philosophy of government by injunction. It recognized how a narrow and restricted interpretation of the "purposes or objects" of picketing, or definitions of a "labor dispute" could again, all too easily, open the closed door of the national policy if the views and philosophies of the forty-eight states were permitted to encroach upon the national field in interstate commerce. Hence the declaration by Congress of its clear policy **that labor relations in industries affecting interstate commerce were to be solely regulated and controlled by the Federal Act,** which principle and policy this Court has consistently guarded and affirmed (Garner, Bethlehem, etc., cases, cited, supra).

Yet Missouri has asserted that it has the first and primary right to pass on and determine:

> (a) whether the **object** or **purpose** of the strike and consequent picketing is lawful;
>
> (b) in accordance with its finding to apply its "restraint of trade" or conspiracy statute as supreme, taking precedence over all federal regulations, machinery and Boards.

We repeat this is contrary to the principle frequently determined by this Court and especially in the Garner case, when it said, 346 U. S. 485, l. c. 501:

> "We think the grievance was not subject to litigation in the tribunals of the State."

Consequently, in 1935 when Congress passed the N. L. R. A. (Title 29, Secs. 141-168, C. 372, 49 Stat. 449) in unmistakable terms it evidenced its purpose of entering the field of labor relations in interstate commerce. Section I of the Act (1935) sets forth the purposes. After discussing the general background, Congress states (last par., Sec 1, U. S. C. A., Sec. 151):

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce, and to mitigate and eliminate these obstructions where they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

The above purpose was carried forward and reiterated by the passage of the L. M. R. A., 1947 (U. S. C., Title 29, Sections 141-187, C. 120), where under the designation "Short Title and Declaration of Policy," Sec. 1, the Congressional intent and purpose was again stated as [Sec. 1 (b)]:

> "It is the purpose and policy of this Act . . . to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other . . .".

In other words, Congress intended one national policy to be determined and controlled by one national Board instead of permitting forty-eight different and independent interpretations by the respective states. This is buttressed by the Norris-LaGuardia Act, 29 U. S. C. 101-115). The legislative history of the N. L. R. A., as amended, and the L. M. R. A. (1947) reveal this purpose.

Let us here further consider the legislative history of the Act as it pertains to the immediate subjects of this discussion, namely, the **exclusive jurisdiction** of the Board in disputes in industries affecting interstate commerce and the subject of **"jurisdictional disputes"** and boycotts being unfair labor practices.[5]

We find that this **exclusive** jurisdiction of the Board, in the field of alleged unfair labor practices particularly, is repeatedly revealed. The House Report No. 245, p. 331, Legislative History of the N. L. R. A., as complied by the N. L. R. B., states:

> "As under the present Act, the power of the Board under the amended Act **in the matter of unfair labor practices is exclusive**. . . . The rule of exclusive jurisdiction was developed many years ago by the Supreme Court in order to provide uniformity in matters of national policy under the commerce clause." (Emphasis ours.)

An exception was made as to the union security provision of the "closed shop" in Sec. 13 of the House Bill

Because of the fact that authority was given to the Board by Sections 10 (j) and 10 (l) to seek injunctive relief, and by Section 303 (b) of the L. M. R. A. (1947), permitting aggrieved parties to file actions in damages, the Senate felt that the continuation of the word "exclu-

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[5] See Appendix B hereof.

sive" as it appeared in the original Act (1935) might be confusing and should be deleted. However, this in no way changed the intent and meaning of the Act as to the sole jurisdiction of the Board in that area wherein the Board had positive competence and power, such as unfair labor practices.

The Court will find an accurate and clear explanation of this phase in **Amazon Cotton Mill Company v. Textile Workers' Union etc.**, 167 Fed. 2nd 183, where the Fourth Circuit had the question before it and where this Court denied certiorari.[6]

The certain intent and purpose of Congress as we have demonstrated was to pre-empt the field of labor relations in industries affecting interstate commerce and to give to the N. L. R. B. exclusive, primary jurisdiction to hear and determine all conduct denominated as unfair labor practices under Sec. 8 (b) of the Act as amended and Sec. 303 (a) of the L. M. R. A. (1947).

As the instant record shows respondent has specifically alleged certain such unfair labor practices and particularly a jurisdictional dispute and boycott under Sec. 8 (b) (4) (D) of the Act as amended and Sec. 303 (a) (4), L. M. R. A. (1947). This very same jurisdictional dispute between the Machinists and the Millwrights was the example used and discussed by Congress at the time the foregoing word "exclusive" was deleted (see Appendix B).

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[6] In the above case the Fourth Circuit, speaking through Chief Judge Parker, had before it this very question as to the exclusiveness of the Board's jurisdiction being affected by the deletion of the word "exclusive" in the amended Act.

The Court, at l. c. 187, fully examined the reasons for the omission of the word "exclusive" and concluded: ". . . that it was not intended to vest and does not vest jurisdiction in the District Courts in cases of this sort." Of course the same reasoning applies with respect to any court, state or otherwise. The exclusive jurisdiction of the Board to utilize the machinery afforded it by Congress and to enforce the regulations laid down and proscribed by the Act is the point involved.

Senator Taft discussed the basic question of the right to strike (93 Congressional Rec. 3835 [1947]):

> "So far as the bill is concerned we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours and working conditions after proper opportunity for mediation."

In other words, Congress has recognized and given employees through their representatives the right to strike and act concertedly for wages, hours, **terms and conditions of employment**. In the instant case the petitioners assert the right to exercise this privilege in support of their demand for **certain conditions of employment**, as revealed by their demand on respondent to **continue** a certain clause in the contract under negotiation (Clause 2, Art. VII, supra). Yet Missouri would interfere and by its determination hold that there is no lawful **purpose or object** under its law, and thus preclude the Federal Board from exercising its exclusive and primary jurisdiction under the Federal Act of determining this question for itself.

An observation at this point is appropriate concerning the subject of working conditions. A "working condition" or "condition of employment" is not to be so narrowly construed as to destroy or defeat its implication. Certainly what is and what is not such a "condition" under the Federal law is not to be left to the varied definitions of the forty-eight states, as Missouri would seek to do.

"Conditions of employment" necessarily are many and varied. The reasonable relationship of the terms and conditions under which working men desire to work for an employer to their employment cannot be defined by any hard and fast rule. Hard and fast rules have no place in the area of human relationships such as employee and

employer. They must be not only flexible, but broad, if industrial peace is the chief object to be sought. The effort of men to protect their work or gain additional work, even at the expense of others, if peacefully sought, should never be narrowly condemned and removed from the scope of conference, discussion and negotiations, as Missouri would seek to do contrary, we say, to the Federal policy.

The Seventh Circuit in **Inland Steel Company v. N. L. R. B.**, 170 Fed. 2d 247, discussed "conditions of employment."[7] In this case a pension and retirement plan by the company, voluntarily inaugarated by the company, was the question. Also see **Amazon Cotton Mill Co. v. Textile Workers Union etc.**, 167 Fed. 2nd 183, wherein "conditions of employment" are likewise discussed. In the Amazon case a pension and retirement plan was also involved.

In this connection it must be remembered that Congress has taken over **the field of** labor relations in interstate commerce. This means the **entire area** of such relations, not just a segment or part. Unless Congress has specifically exempted a particular part of this field, or has remained silent on the subject, or has ceded it to state control, the states are excluded and so the cases hold.

Where the public peace and order of a state are transgressed by violence, mass picketing and related conduct, then the traditional right of a state to protect itself under its police power, from such breaches, are and always have been recognized as proper areas of state regulation and control. The instant case does not by any means fall in this restricted area.

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[7] The Inland Steel case involved the refusal of the Company to bargain on the subject of its own, voluntary pension and retirement plan, on the ground ". . . that it is not required to do so under the terms of the Act. It follows then that the issue for decision is—whether pension and retirement plans are part of the subject matter of compulsory collective bargaining within the meaning of the Act."

Congress has not remained silent in the instant area but has specifically ". . . taken in hand this particular type of grievance . . ." (Garner case). Congress has specifically enumerated certain conduct of employees as unfair labor practices under Section 8 (b) of the Act. Respondent alleges the conduct of petitioners herein as violative of those provisions of the Act (R. pp. 3, 6, 7, 8, Pars. 3, 9, 10, 15, Resps. Compl.).

Therefore, when Congress entered this field and provided regulations, methods, machinery and Boards to effect the regulations, all state regulation and control was necessarily precluded and excluded. This is implicit in the Act. We repeat, Congress has pre-empted this field in interstate commerce. To permit state interference by one means or another, by pretext or strained and narrow processes of reasoning and construction, would be to emasculate the Federal Policy and destroy it as well as to do violence to the Federal supremacy provision of the United States Constitution, Article VI.

To sustain these principles this Court has repeatedly ruled in the cases we have set out, supra, i. e.:

Garner et al. v. Teamsters etc. Union et al.;
Building Trades Council et al. v. Kinard etc.;
Bethlehem Steel Co. v. N. Y. State Labor Board;
International Union etc. v. O'Brien et al.;
La Crosse Tel. Corp. v. W. E. R. B.;
Amalgamated Assoc. Motor Coach Employees etc. v. W. E. R. B.;
Hill v. Florida.

Of course the above list is not meant to be all inclusive. There are many more cases to the same effect. The foregoing, we believe, suffices our purpose here.

The **principle** announced in these cases is the exclusion from interference in the federal field. The **emphasis** is

directed **against the intrusion,** not the one who seeks it. A State, a State Labor Board or a State Court are all necessarily included in the prohibition.

This Court, in **Hill v. Florida,** 325 U. S. 538, l. c. 542, held:

> "The Board properly rejected the employers contention that Congress did not intend to subject the 'full freedom' of employees to the eroding process of 'varied and perhaps conflicting provisions of state enactments.' Cf. N. L. R. B. v. Hearst Publications, Inc., etc., 322 U. S. 111."

In Hill v. Florida it was the State of Florida which asserted the right to invade the Federal field by its enactment of a specific law seeking to license union business agents, etc.

In **Bethlehem Steel** it was a State Labor Board. This Court held, at 330 U. S. 767, l. c. 774:

> "But when federal administration has made comprehensive regulations effectively governing the subject matter of the statute, the Court has held that a state regulation in the field of the Statute is invalid even though the particular phases of the subject has not been taken up by the Federal agency. (Cases cited.)"

and at l. c. 776 the Court says:

> "The Federal Board has jurisdiction of the industry in which these employees are engaged and has asserted control of their labor relations in general. . . . We do not believe this leaves room for the operation of the state authority stated."

In **International Union, etc., v. O'Brien,** 339 U. S. 454, 44 L. Ed. 978, 70 S. C. 781, where the right to strike was involved, it was held, l. c. 459:

"Clearly, we reaffirm the principle that if 'Congress has protected the union conduct which the state has forbidden, the state legislation must yield.' That principle is controlling here."

At bar petitioners have consistently contended that Congress has—

(a) "protected" their conduct in exercising their right to strike and to peacefully picket respondent for the object and end sought or, likewise, that Congress has—

(b) proscribed petitioners' alleged conduct as an unfair labor practice (jurisdictional strike and boycott) under Sec. 8 (b) (4) (D) of the Act as amended, and Sec. 303 (a) (4) of the L. M. R. A. (1947) as alleged by respondent in its petition.

Hence, we argue that in either event the subject matter is within the area exclusively reserved for determination **in the first instance** by the Federal Board and that Missouri has no right or power to predetermine it.

"Congress has occupied this field and closed it to state regulations." O'Brien case, supra, 339 U. S. 454, l. c. 457.

The Garner case, supra, is completely determinative of petitioners' contention at bar. We repeat what we have previously stated:

"Congress has taken in hand this particular type of grievance when it affects interstate commerce" (346 U. S. 485, l. c. 488). ". . . The power and duty of primary decision lies with the Board, not with us. But it is clear that the Board was vested with power to entertain petitioner's grievance (at bar, respondent's) to issue its own complaint against respondents (at bar, petitioners) and, pending final hearing, to seek, from

the U. S. District Court, an injunction to prevent irreparable injury to petitioners (at bar respondents) while their case was being considered" (346 U. S., l. c. 489). (Parenthesis ours.)

It will be argued that the case of **Giboney et al. v. Empire Cold Storage & Ice Co.**, 336 U. S. 490, 69 S. C. 684, 93 L. Ed. 834, is in point here. **This we deny!** The Giboney case came to this Court on one single question, namely, did the Fourteenth Amendment of the Federal Constitution (Freedom of Speech) deprive Missouri of its right to hear and determine the issues **there** presented? This Court said "No." The facts on which the Giboney case was heard, admittedly occurred prior to the amended N. L. R. A. and the L. M. R. A. (1947), although the case was decided subsequently. The Union (The Teamsters) was seeking to unionize certain independent ice peddlers in Kansas City, Missouri, and to this end were seeking to prohibit Empire and other ice manufacturers from selling and furnishing ice to these peddlers and thus to compel these manufacturers to aid in the unionization of these peddlers. The Teamsters were enjoined by the state court from continuing this activity. The **single** issue presented to this Court and which this Court decided was, were petitioners' rights of free speech violated under the Fourteenth Amendment of the United States Constitution? **There was no question or issue involved or presented directly or indirectly challenging the jurisdiction or the right or power of Missouri to hear or determine the issues in the first instance.** There was no National Act even suggested. In fact, no provision of the N. L. R. A. applied!—or was involved. So we say, this case is without merit at bar where the sole question is one of primary jurisdiction under the Federal law and policy to hear and determine certain issues alleged by respondent to be unfair labor practices under the Federal law. In other words, the **same issues** as were determined by this Court in the Garner (and

Kinard) cases. Reference is here made to the observations by Prof. Cox, supra, concerning the Giboney case.[8]

Likewise respondent seeks to avail itself of the Laburnum case (United Construction Workers v. Laburnum, 347 U. S. 656, 98 L. Ed. 686, 74 S. C. 833). Let us briefly consider **the facts** in this case, because **the facts determine the relevancy of the language.** A union indulged in **conduct** which constituted a tort in Virginia against the corporation (plaintiff) there and the corporation brought a civil action for damages in the State Court of Virginia. This should be sufficient to absolutely distinguish the case. The field of tort actions for damages is not and was never intended or contemplated to be pre-empted by Congress. As we have argued, violence, mass picketing, etc., are areas in which the state has control and so in the matter of the commission of torts.

The foregoing principle was dealt with by this court in the Garner case, 74 S. C. 161, l. c. 164.

> ". . . Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740, 749. Nothing suggests that the activity enjoined threatened a prob-

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[8] "(Note 128, l. c. 1330, Harvard Law Review article, supra), 265 S. W. 2nd, at 328. *Other aspects* of the opinion (the Missouri Court's opinion in the instant case) *are quite unsatisfactory.* The heavy reliance on Giboney v. Empire Storage and Ice Co., 336 U. S. 490 (1949), is unwarranted because the question of federal preemption was not before the Court. The statement that the pending case did not involve a labor dispute under the Norris-LaGuardia Act is contrary to the federal decisions. See Yoert Brewing Co. v. Brennan, 59 F. Supp. 625 (D. Minn., 1945), where prior cases are collected." (Emphasis and parentheses ours.)

able breach of the state's peace or would call for extraordinary police measures by state or city authority. Nor is there any suggestion that respondents' plea of federal jurisdiction and preemption was frivolous and dilatory, or that the Federal Board would decline to exercise its powers once its jurisdiction was invoked."

The law of torts lays hold of the actor's conduct without regard to its context or purpose. In other words there is a sound distinction between the object or purposes of concerted action and the conduct of the parties. In the former this court has consistently held that these objects and purposes are within the pre-empted field wherein the Federal Board has exclusive jurisdiction. In the latter instance, the conduct of the parties constitutes a field wherein the states, as in the Laburnum case, may exercise control.[9]

3. To Permit the Jurisdiction of Missouri Under the Facts Is to Permit the Eroding Away of Federal Authority and the Destruction of the Clear Congressional Purpose of Exclusive Jurisdiction in the N. L. R. B.

It seems to us that the mere statement of the foregoing, especially after our previous discussion, should be sufficient to justify its assertion. We have fully demonstrated, we think, the exclusive character of the jurisdiction, power

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[9] Cox, Harvard Law Rev., Vol. 67, No. 8, pp. 1332-33:

"Violence, mass picketing and the destruction of tangible property are unlawful regardless of the existence of a labor dispute. State courts should be free to deal with them under general laws relating to the protection of persons and property and to grant preventive relief in accordance with the normal principles of equity even to the extent of enjoining peaceful picketing enmeshed in a context of violence. The principle furnishes a sound basis for deciding United Const. Workers v. Laburnum, etc., now pending in the Supreme Court on a Writ of Certiorari." (The Laburnum case has since been decided in keeping with these views.)

and right of the N. L. R. B. in matters such as are involved in this case. The respondent has alleged those powers and has invoked them. Respondent itself has built the fence encompassing and defining the controversy and within the limit of this field respondent must be held. The questions of boycott, jurisdictional dispute, forced work assignment, etc., raised by respondent are within the sole and exclusive competence of the N. L. R. B. to hear and decide in the first instance, exclusive of any state tribunal.

The grievances alleged are in the field of labor relations in interstate commerce, as this Court has said in the Garner case (supra). If this be so then neither Missouri, nor any state, can be permitted to erode away and destroy the Federal law. If Missouri can do what it here seeks to do for the self-asserted reasons it advances, then any state can do the same and the wording, intent and purpose of the Federal Act would be emasculated. The states would determine their own power, jurisdiction and rights in the face of the Congressional purpose and in the teeth of the Constitutional power. As this Court said in Hill v. Florida (supra), "What Congress constitutionally has given the states cannot constitutionally take away."

4. A Conflict of Laws Exists and the Federal Law Is Supreme Under Article VI of the Constitution of the United States.

Assuming, for argument's sake, respondent's position to be correct, then, concerning the issues here involved, there is a definite conflict of laws, to-wit:

(a) The N. L. R. A., as alleged, and

(b) The Missouri Restraint of Trade Statute.

The answer then becomes simple, needing no prolonged argument or citation to support it, the Federal law is

supreme and must prevail. (U. S. Constitution, Article VI.)[10]

At bar we have a national brewing company, Anheuser-Busch, Inc., admittedly in interstate commerce (R. p. 22), being picketed by petitioners whose right to bargain with the employer is assured by a certification of the N. L. R. B. These petitioners were enjoined by a state court because they sought to attain an object which the N. L. R. B. later found not to be actionable under provisions of the N. L. R. A. (101 N. L. R. B., No. 87).

This court is then presented with the problem, is this clause which the petitioners wanted **retained in the contract,** one which is legal under the N. L. R. A., or is it actionable as an unfair labor practice under the N. L. R. A.

As this court stated in the Garner case, supra, l. c. 499,

> "The Federal Board, if it should find a violation of the N. L. R. B., would issue a cease or desist order and perhaps obtain a temporary injunction to preserve the status quo. **Or if it found no violation, it would dismiss the complaint, thereby sanctioning the picketing.**" (Emphasis ours.)

This applies here. The N. L. R. B. had to determine whether or not this action by petitioners was an unfair labor practice or whether it fell within the protected rights of the petitioners for which they are entitled to bargain under Sec. 7 of the N. L. R. A. It is our opinion, supported by the above statement of this court, that if

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[10] Article VI of the United States Constitution, paragraph 2, is as follows:

> "Supreme Law of the Land. This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

an action is not specifically proscribed presumably it is sanctioned and protected under Section 7 of the Act. This is made clear by this Court in Garner et al., supra, when it continues at, l. c. 499:

> "The detailed prescription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint, for the policy of the L. M. R. A., is not to condemn all picketing but only that ascertained by its prescribed process to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by **freedom of labor to use the weapon of picketing**. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal act prohibits." (Emphasis ours.)

This of course is our point. For an industry in interstate commerce, the federal act must apply. It is supreme if the proper tribunal, the N. L. R. B. determines there is no violation under Sec. 8 (b) (4) (D), then by implication it must be protected under Sec. 7. Congress could not have intended to leave conduct falling within its jurisdiction to regulate, unregulated.

This Court in International Union of Auto Workers, CIO, et al. v. O'Brien, 339 U. S. 454, 70 S. Ct. 78, at l. c. 456, stated:

> "Congress has not been silent on the subject of strikes in interstate commerce. (* * * citing sections of NLRA.) None of these sections can be read as permitting concurrent state regulation of peaceful strikes for higher wages. Congress occupied this field and closed it to state regulation."

In **General Comm. v. M. K. & T.**, 320 U. S. 323, l. c. 336, this Court said:

> "When Congress came to the question of jurisdictional disputes, it chose **not to leave** their solution to the courts." (Emphasis ours.)

This, of course, is reasonable, or why all the elaborate machinery of the NLRB, a Board especially skilled in handling just such matters.

The exact fact situation that existed in International Union of Auto Workers et al. v. O'Brien, supra, exists here, namely, whether a state quasi-criminal statute has authority over a Federal labor law. This Court decided the state's authority is subservient. In **I. L. U. v. Sunset Line & Twine Co.**, 77 Fed. Supp. 119, the Court there in re injunctive relief sought by the plaintiff, said:

> "The legislative history of the Act (L. M. R. A.) demonstrates that Congress did not enlarge the rights of private litigants. Although jurisdictional strikes and secondary boycotts were made independently unlawful in Section 303 of the Act, and persons injured thereby were accorded a right to sue for damages in the district courts, nevertheless, it is clear that Congress did not intend either by express or by necessary implication, that private parties should have a right to injunctive relief even as an ancillary remedy in the permitted suit for damages."

For the sake of argument let it be said that the State Court, under State law, has the right of granting injunctive relief in furtherance of enforcing violation of Federal law. Then the question is, have defendants violated the Federal law? The best answer to that is that the proper tribunal, the N. L. R. B., in 101 NLRB No. 87 (or CCH, Par. 11,959, Anheuser-Busch v. Dis. No. 9, IAM) held in this specific case, with these same parties and these same facts,

that defendants herein did not violate the provisions of the Federal law. Also see:

In re: Teamsters, Local 807, v. Schultz Refrigeration Service, 87 NLRB No. 82;
Local 813 v. Ryan Construction Co., 85 NLRB 417;
International Rice Milling Co. v. NLRB, 341 U. S. 665, 71 S. Ct. 961.

It is clear then that the State Courts of Missouri have not properly applied the Federal law to these facts. They should have dismissed respondent's petition under Article VI of the United States Constitution as a simple conflict of laws case.

CONCLUSION.

So we present "The Question":

The question presented is whether the State Court of Missouri, under the facts in this case, has the competence to assume jurisdiction in a labor dispute in an industry affecting interstate commerce, where such jurisdiction is in conflict with and intrudes upon the national labor relations policy and statutory scheme.

Under the "Statement of the Case" Part V hereof, we have set forth the factual background of the question here presented, which, we believe, justifies our answer of "No" to this question.

The Federal law is both an unequivocal and comprehensive assertion of power by Congress to regulate the relations of the parties to this action. This is true whether:

(a) Viewed in the light of petitioner's assertions that they are engaged in lawful concerted activities to achieve their lawful purpose, or

(b) From the viewpoint of the Supreme Court of Missouri that petitioner seeks, by reason of a juris-

dictional dispute, and boycott, to compel respondent to violate the Restraint of Trade (Conspiracy) Statute of Missouri.

In either event the issues fall squarely within the regulatory power of Congress.

The point at which the Missouri Court erred, it seems to us, is in holding:

(a) There is no labor dispute, and

(b) There is no unfair labor practice, because the N. L. R. B. said so! (R. p. 105.)

This is patently wrong and is not the determinative factor. This case, with its allegations of violation of the Federal law, was filed in April, 1952. On April 19, 1952, when respondent obtained its "ex parte" restraining order and injunction, there was no mention or pleading of any Missouri Restraint of Trade Statute! The case was heard in June, 1952, by the State Court over the petitioner's objections that there was no jurisdiction in the State Court and it was determined in October, 1952, by making the "ex parte" restraining order and temporary injunction of the State Court permanent.

After the jurisdiction was thus fully usurped, the incongruous position is now asserted that since it is alleged the N. L. R. B. **in November, 1952** (101 N. L. R. B., p. 346, No. 87), **months later**, held that there was no dispute and no unfair labor practice, **this can be applied retroactively** to justify the wrongful assumption of jurisdiction by Missouri **in April-June, 1952.** This is unbelievable logic and reasoning. We repeat, the N. L. R. B. had original, primary and exclusive jurisdiction, under the law and the facts in this case, as respondent by its actions and conduct has admitted. **The Board's decision did not give it or deprive it of jurisdiction.**

Respondent asserts that the instant subject is not a proper one for negotiation; that it is not related to a "condition of employment"; that it is unlawful; that it seeks to coerce or compel respondent to violate the Missouri Restraint of Trade Statute; that in reality it represents a jurisdictional dispute between the petitioner (Machinists) and the Millwrights (Carpenters).

Hence the issue is sharply presented—is the subject sought a proper one for negotiation as a "condition of employment" under the Federal law? If it is, as petitioner alleges, and as it has demonstrated, supra, then certainly no one can be heard to complain and no injunction can issue. **Who is to determine and answer this question?** The Federal agency or the State Court?

Under the facts and the pleadings in this case the answer is clear. The Federal law, machinery and regulations must be applied in the first instance. To argue to the contrary is to argue for the complete impotency of the Federal law and regulations because we have here an industry admittedly engaged in interstate commerce over whose labor relations the Federal law has taken direct jurisdiction. The Federal jurisdiction is primary and exclusive as this Court has repeatedly ruled as we have fully shown.

Therefore, if the sought object is determined by the Federal procedure to be a proper one for negotiation, then Missouri must yield to the dominant and supreme law. If the sought object is determined under the Federal procedures to be an improper one, then the N. L. R. B. has power to order these petitioners to cease and desist and it is afforded injunctive facilities under the Act to protect the parties.

Petitioners argue that when Missouri injected its laws and regulations, and determined for itself the lawfulness

or unlawfulness of the conduct in question, it violated the controlling authority of the Garner and the many other Federal cases we have cited.

Federal power and authority should not be subjected to the ingenuous attacks of the states in determining in the first instance whether or not a guaranteed federal right is being exercised for a proper purpose or object. To permit a state to first determine this question for itself would be to destroy the federal power and would do effective violence to any concept of federal pre-emption or power in this field. It would render Sections 8 (b) (4); 10 (a) (j) (k) (l), N. L. R. A., as amended, and Section 303 (a) of the L. M. R. A., 1947, impotent. These sections in particular afford respondent its exclusive remedy.

The holding and ruling of this Court in the Garner case, supra, is completely controlling and decisive here.

Your petitioners respectfully assert that for the reasons herein set forth, and in keeping with the decisions of this Court, the judgment of the Supreme Court of Missouri should be reversed.

Respectfully submitted,

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APPENDIX A.

The following are the various pertinent sections of the N. L. R. A., as amended, and the L. M. R. A. (1947) (U. S. C., Title 29, Secs. 141-187, c. 120):

Statement of Policy.

Section 1 (b) (U. S. C., Sec. 141). Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I.

Amendments.

Sec. 101; Findings and Policies.

(Last Par. U. S. C., Sec. 151.)

Section 1. * * *

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS.

"Section 2 (U. S. C., Sec. 152). When used in this Act—

Labor Dispute.

"(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

Rights of Employees.

"Section 7 (U. S. C., Sec. 157). Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representa-

tives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Union Unfair Labor Practices.

"Section 8 (b) [U. S. C., Sec. 158 (b) 4, 4-A, 4-B, 4-D]. It shall be an unfair labor practice for a labor organization or its agents—

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

"4 (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

"4 (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9;

"4 (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to

conform to an order or certification of the Board determining the bargaining representative for employees performing such work: Provided, that nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act'';

TITLE III.

Suits by and Against Labor Organizations, Boycotts and Other Unlawful Combinations.

[U. S. C., Sec. 303 (a), 1, 2, 4; U. S. C., Sec. 187 (a), 1, 2, 4.]

Section 303 (a). It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or other self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative

of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

TITLE I.

Exclusive Right of Majority Representative.

"Section 9 (a). [U. S. C., Sec. 159 (a).] Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agree-

ment then in effect; Provided further, that the bargaining representative has been given opportunity to be present at such adjustment."

PREVENTION OF UNFAIR LABOR PRACTICES.

Power of Board.

"Section 10 (a). [U. S. C., Sec. 160 (a).] The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise; Provided, that the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith."

Power of Board to Petition Courts for Temporary Injunctions.

"Section 10 (j). [U. S. C., Sec. 160 (j).] The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate

temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

Determination of Jurisdictional Disputes by Board.

"Section 10 (k). [U. S. C., Sec. 160 (k).] Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

Duty of Board to Seek Injunctive Relief Against Certain Strikes and Boycotts.

"Section 10 (l). [U. S. C., Sec. 160 (l).] Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within

any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: **Provided, further,** That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: **Provided further,** That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D)."

APPENDIX B.

Pertinent References as to Legislative History of the Act and Jurisdictional Strikes. (Footnote 4.)

93 Cong. Rec. 3329; Cong. Rec. Senate 4/9/47; p. 995, Legislative History, published by the N. L. R. B.; **Senator Lucas** read into the Record a letter from Griesedieck Western Brewing Company touching directly on this dispute. The following are the pertinent excerpts:

"February 3, 1947.

"Hon. Scott Lucas
United States Senate
Washington, D. C.

Dear Mr. Lucas:

We have had a jurisdictional dispute for the past 3 weeks at our new bottling plant (Belleville, Illinois), . . . (Sets forth parties to dispute, i. e., The Machinists and the Millwrights.)

". . . We would appreciate it very much if you would telegraph or write the following: Mr. Harvey Brown, president, International Association of Machinists, Machinists Building, Washington, D. C.; Mr. William Hutchenson, president, Brotherhood of Journeymen Carpenters & Joiners, Indianapolis, Indiana . . ."

Letters were written by Sen. Lucas to each of the above parties:

"It has come to my attention that there is a jurisdictional dispute over the erection of bottling machinery in the Griesedieck Western Brewing Company of Belleville, Illinois. . . . I do not hesitate to say that the matter of jurisdictional disputes is one of the things that Congress will probably outlaw when new legislation is written . . ."

The above William Hutchenson is the same one involved in **U. S. v. Hutchenson,** 312 U. S. 219, l. c. 232, 234, and having to do with the instant dispute between the parties at bar.

Note that this Court, in the Hutchinson case, pertinently observed that since the Norris-LaGuardia Act prohibited the issuance of injunctive relief in a controversy, jurisdictional or otherwise, and thus left the matter to negotiation, etc., that the same conduct thus permitted could not be the subject of criminal sanctions under the Sherman Anti-Trust Act.

This is what petitioner herein contends, subject to the amendments of the N. L. R. A. as they appear in Section 8 (b) (4) (D) of the amended Act.

These amendments make a jurisdictional dispute an unfair labor practice and hence within the sole jurisdiction of the N. L. R. B. to whom unfair labor practices have been exclusively awarded.

Senator Morse, 93 Cong. Rec. 1890-1; Cong. Rec. (Senate) 3/10/47, pp 950-954, Legislative History, published by the N. L. R. B., in discussing Sec. 8 (b) (4) (D), said:

> "I have attempted to define as unfair labor practices certain types of strikes, **jurisdictional disputes and secondary boycotts.** These provisions are in Sec. (4) (D) of the bill . . . " (Emphasis ours.)

Senator Taft, 93 Cong. Rec. 3954; Cong. Rec. (Senate) 4/23/47, p. 1012, Legislative History published by the N. L. R. B., states:

> "The fourth type of unfair labor practice is the ordinary jurisdictional dispute in which two unions compete for work on a particular job."

Senator Ellender, 93 Cong. Rec. 4255-6; Cong. Rec. (Senate) 4/28/47, pp. 1056-7-8 Legislative History published by the N. L. R B.

Senator Ball, 93 Cong. Rec. 2377; Cong. Rec (Senate) 5/13/47, p. 1524 Legislative History published by the N. L. R. B., Senator Ball stated:

> "The pending bill makes boycotts and strikes (jurisdictional) unfair labor practices, directs the N. L. R. B. to go into court and obtain injunctions stopping them and gives the injured parties the right to sue for damages actually sustained."

The legislative history of the Act is replete with testimony and declarations, of which the foregoing are but a few examples, of the Congressional intent and purpose to make jurisdictional disputes, as in the case at bar, unfair labor practices within the ambit of Federal regulation by the Act and within the sole jurisdiction of the N. L. R. B.

No. 97

Office - Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1953.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9,
Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation,
Respondent.

BRIEF

Of Respondent, Anheuser-Busch, Inc., in Opposition to Issuance of Writ of Certiorari.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1953.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9,
Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation,
Respondent.

BRIEF

Of Respondent, Anheuser-Busch, Inc., in Opposition to Issuance of Writ of Certiorari.

OPINION OF THE SUPREME COURT OF MISSOURI.

The opinion of the Supreme Court of Missouri is reported as **Anheuser-Busch, Inc., v. Lloyd Weber et al.**, 265 S. W. (2d) 325 (not yet officially reported). It also appears on pages 104 to 119 of the record. The opinion is dated February 8, 1954.

The motion for a rehearing was overruled on March 8, 1954, and the per curiam opinion of the Supreme Court of Missouri bearing that date (not yet officially reported) is reported in 265 S. W. (2d) 334, immediately following the opinion of February 8, 1954. The per curiam opinion also appears on pages 124 to 126 of the record.

JURISDICTION OF THIS COURT.

In filing their petition for a writ of certiorari, petitioners have invoked the jurisdiction of this Court under Title 28, U. S. C. A., Section 1257 (3) (June 25, 1948, c. 646, 62 Stat. 929).

STATUTES OF THE STATE OF MISSOURI INVOLVED.

The case involves the action of the Circuit Court of Missouri in enjoining the violation of Missouri statutes which prohibit restraints of trade and prescribe both criminal and civil penalties for violations.

The Missouri anti-trade restraint statutes are contained in Chapter 416 of the official compilation, entitled "Monopolies, Discriminations and Conspiracies" (2 Revised Statutes of Missouri, Sec. 416.010 et seq., pp. 3318-3320; 21 V. A. M. S., Sec. 416.010 et seq., pp. 849, 869-872, 877). The pertinent provisions of these statutes are set out in Appendix A of this brief.

THE QUESTION PRESENTED.

The question presented is whether conduct which violates State law, both common law and statutory law, including a State criminal statute, applicable alike to all citizens of the State, is removed from the control of the State and is therefore ungoverned because some of the parties involved in the unlawful conduct are members of a labor organization and claim immunity under the Labor Management Relations Act, 1947 (c. 120, 61 Stat. 136 et seq.).

STATEMENT OF THE CASE.

This action arose in the City of St. Louis, Missouri, in the early spring of 1952 (R. 1).

Respondent is the operator of the largest brewery in the St. Louis, Missouri, area (R. 104).

Petitioners, members of a labor organization commonly called the "Machinists" are the bargaining representatives of some 220 employees of respondent who are regularly engaged in repair and maintenance work on machinery which has already been installed by independent contractors at respondent's brewery (R. 24, 106). Petitioners have been certified by the National Labor Relations Board as bargaining representatives for these employees of respondent (R. 25).

At the time this action arose, no labor dispute existed between petitioners and respondent (R. 97, 109), and this fact was clearly stated in the record by respondent's counsel at the outset of the presentation of evidence in the Circuit Court of St. Louis, Missouri (R. 19).

At the time this action arose, petitioners had formed a combination of labor and industry for the purpose of withholding business relationships from any independent construction contractor in the St. Louis, Missouri, area who would not agree to break his existing collective bargaining agreement with his millwright employees covering the moving, erecting and installing of machinery in new construction and reconstruction of buildings, and to hire Machinists for this purpose (R. 32, 24, 108, 109). Such a combination of labor and industry violates the Missouri common law of restraint of trade and the Missouri anti-trade restraint statute, which is declarative of this common law, and subjects the individual members of the com-

bination to civil liability for damages and to punishment under the Missouri criminal law (R. 109, 111). Such an unlawful combination is designated a "conspiracy" under Missouri law and is frequently so referred to by its Courts.

The Supreme Court of Missouri in the instant case held this combination to be a violation of the Missouri civil and criminal law aforesaid (R. 111).

Petitioners wanted respondent to join the conspiracy, believing that then the other breweries in the area would follow (R. 41); however, respondent refused, upon advice of legal counsel, to violate the Missouri law (R. 34, 40, 107).

In the Spring of 1952 petitioners and respondent were in the process of negotiating a new collective bargaining agreement covering the Machinist employees of respondent (R. 31).

Meeting of the minds was had on every element of the new bargaining agreement which pertained to the work performed in respondent's brewery (R. 34, 40, 108). However, petitioners selected this occasion to force respondent to join their unlawful conspiracy of labor and industry (R. 40). They demanded the insertion of a certain Section 2 of Article VII in the proposed agreement, under the general heading of "Jurisdiction," and stated that this section obligated respondent to carry out the unlawful purpose of the conspiracy (R. 32, 108).

Petitioners stated that unless respondent agreed to join this conspiracy of labor and industry petitioners would assert a specious continuing disagreement over points of the collective bargaining agreement which, in truth, had already been settled (R. 34, 110). Then, they stated, petitioners would call a strike of Machinists at respondent's

plant (R. 33), and by the establishment of picket lines would prevent the commercial operation of respondent's brewery (R. 34).

Under Missouri law, if respondent joined the conspiracy of labor and industry, although it remained entirely passive in its membership, respondent became subject to criminal prosecution along with all other members for acts done by any member in furtherance of the objects of the unlawful conspiracy (R. 109).

The Supreme Court of Missouri in the instant case declared that the undertaking by the petitioners to coerce respondent to join the unlawful conspiracy against the Millwrights and the construction contractors was a violation of the Missouri civil and criminal law aforesaid (R. 111, 112).

When respondent explained to petitioners that it would not join the unlawful combination, on advice of counsel that it was unlawful, petitioners repeated their threats and, this failing, called a strike (R. 34). Picket lines were established (R. 24). Respondent could not get supplies or make shipments, and its food in process was in danger of spoiling (R. 33, 109, 110).

Petitioners repeated that they had no dispute with respondent except over respondent's refusal to join the unlawful conspiracy of industry and labor (R. 34, 40). It had to be that, said petitioners, or else respondent's plant would continue to be immobilized (R. 40).

No issue of any sort, whether "labor" or "commercial," was then involved between petitioners and respondent other than participation of respondent in the unlawful conspiracy against the Millwrights and the independent construction contractors (R. 112). No work was then being performed on respondent's premises by anyone

which was of the type that would be affected by the unlawful conspiracy (R. 36). Respondent had no facilities for doing this type of work and, with one exception provoked by petitioners, never had attempted to do so with its own employees. When the necessity for the doing of such work arose, respondent invariably contracted it out to independent construction contractors who used their own employees to do the work (R. 36, 106).

Upon respondent's complaint the Circuit Court of St. Louis, Missouri, issued a temporary restraining order against the picketing. Thereafter the trial Chancellor heard the evidence and found the above facts, and entered a permanent injunction against the picketing which the Chancellor found was for the sole purpose of compelling respondent to participate in said unlawful combination (R. 83, 80).

The facts thus found by the Chancellor and the terms of the injunction were affirmed by the Supreme Court of Missouri (R. 105, 110).

SUMMARY OF ARGUMENT.

I.

Petitioners, in their statements to representatives of respondent during the collective bargaining negotiations beginning in December, 1951, set forth clearly and candidly all the facts required to invoke the jurisdiction of the Courts of Missouri. These facts included a description of the combination of labor and industry against construction contractors and their employees, who were totally unconnected with respondent; the insistence that respondent join the combination; the specious labor dispute over nonexistent contract differences which would be asserted by petitioners and continued until respondent joined the combination; and the strike action and picketing which petitioners intended to undertake, allegedly as part of the specious labor dispute but actually to coerce respondent to join the combination.

The trial Court and the Supreme Court of Missouri found that these statements by petitioners, and other stipulated facts, established the existence of a combination of labor and industry which was illegal as a conspiracy under the Missouri anti-trade restraint law, and that the statements of petitioners also established that their coercion of respondent was for the sole purpose of forcing respondent to join the conspiracy. These findings were supported by substantial evidence. The combination of labor and industry, of which petitioners were members, violated the civil and criminal laws of the State, and the issuance of the injunction by the State Court against picketing followed as the necessary consequence of the violations of Missouri law.

Petitioners, as part of the unlawful conspiracy of labor and industry (a felony under the laws of Missouri), were

seeking to coerce respondent to join the conspiracy and thereby to commit a felony under Missouri law by the mere fact of having joined. Under the general law of Missouri respondent was entitled to protection, in the form of an injunction against coercion by petitioners. The fact that the particular coercion was picketing did not alter respondent's right or the power of the Court, because the picketing was for an unlawful purpose, as part of the conspiracy.

II.

The Supreme Court of Missouri had carefully detailed the right of freedom from coercion to commit a felony in the very similar case of **Empire Storage & Ice Co. v. Giboney** (1948), 357 Mo. 671, 210 S. W. (2d) 55, and had sustained an injunction against coercion by picketing in that case. Its decision was upheld by a unanimous decision of this Court in 1949 under the style **Giboney v. Empire Storage and Ice Co.** (1949), 336 U. S. 490, 69 S. Ct. 684, 93 L. Ed. 834. These decisions make it clear that while concerted action of labor organizations to achieve legitimate objectives may not be interfered with, labor activities may not be perverted to achieve an unlawful end. The Supreme Court of Missouri properly upheld the injunction in the case at bar on the authority of the **Giboney** decision.

III.

Petitioners here contend that the Labor Management Relations Act, 1947, has altered the power of the State of Missouri to enforce its general laws against restraint of trade, and to protect respondent from coercion to force respondent to commit a felony. Such a contention is without merit. The general public policy of freedom of labor activities reached its zenith in the Wagner Act, or National Labor Relations Act of 1935. Nothing in the public

policy expressed there or in the Norris-LaGuardia Act prevented the issuance of the injunction in the Giboney case and properly so, because the public policy against restraint of trade does not permit combinations of labor and industry, and will not permit such an unlawful combination to conduct its operations under the guise of an asserted labor activity.

The public policy against restraint of trade continues unchanged. In addition, as clearly stated by this Court, the Labor Management Relations Act, 1947, has increased, rather than decreased, the responsibility of labor organizations. Therefore the passage of the Labor Management Relations Act, 1947, did not indicate a change in the public policy that combinations of labor and industry in restraint of trade are unlawful.

None of the activities of petitioners against respondent are within the scope of the unfair labor practices of a labor organization as set out in Section 8 (b) of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, but in any event nothing in Federal law could protect respondent from civil and criminal liability under the Missouri law if respondent was compelled to join the illegal conspiracy. The Missouri anti-trade restraint law and its penal provisions exist and are operative in a field entirely removed from labor law, and its policies are consistent with all Federal law. The operation of Missouri law should not be altered by the fact that one of the violators of the Missouri anti-trade restraint law is a labor organization.

ARGUMENT.

I.

Petitioners' Statements to Respondent Before and After the Picket Line Was Established Confessed the Unlawful Conspiracy Found by the Courts of Missouri and Supported Issuance of the Injunction.

The instant case as between petitioners and respondent involves neither a "labor dispute" nor an "unfair labor practice."

At the outset of the hearing of the evidence before the trial Chancellor in the Circuit Court of Missouri, the position of respondent was stated by its counsel as follows (R. 19):

> *"The plaintiff does not wish to be understood as in any way contending in this case that this Court has before it for consideration, decision or resolution, by this Court, a labor dispute.*
>
> "There is reference in the petition to a labor dispute and to a jurisdictional dispute between two labor unions. Those matters were, we believe, necessarily referred to in the petition, and we believe that they will necessarily also be referred to in the evidence.
>
> "The plaintiff, however, does not request any action by this Court with respect to, or with respect to resolving those labor controversies." (Italics ours.)

A. Petitioners Acknowledged to Respondent the True Purpose of Their Activities and the Means They Would Utilize Therein. Petitioners Also Acknowledged to Respondent That They Would Simulate a Labor Dispute to Mask the True Purpose of Their Activities.

Before the action was initiated in the Circuit Court, and while petitioners entertained false hopes that respondent

would join their unlawful conspiracy of labor and industry against the independent construction contractors and their Millwright employees, petitioners stated quite frankly to respondent their purposes in this conspiracy. When respondent refused upon advice of counsel to violate the Missouri law and explained why, petitioners candidly acknowledged that they had no disagreement with respondent over their collective bargaining agreement, and were equally candid in announcing their intention to contend speciously that such a disagreement existed. They stated their intention to use that false dispute as the excuse for strike action, and the strike, in turn, as the excuse for preventing the operation of respondent's plant by picketing. They stated that this course of conduct was for the sole and express purpose of coercing respondent to join the conspiracy of labor and industry against the construction contractors and their Millwright employees (R. 33, 34).

The facts clearly demonstrate that the petitioners perverted the traditional **forms** of a labor dispute in the course of their unlawful conspiracy. This accomplished, the petitioners contended that they had, and have, a peculiar immunity from the operation of the Missouri laws which their conduct violated.

Initially, after respondent filed the complaint in the Circuit Court of the City of St. Louis, the petitioners sought its removal to the United States District Court for the Eastern Division of the Eastern District of Missouri, on the ground that the case involved a labor dispute over which the Federal tribunals have exclusive jurisdiction. In his memorandum opinion remanding the case to the State court, Judge Hulen stated that the effect of the complaint was:

> "to set up a common law cause of action, by pleading a number of unlawful acts by the defendants' union as evidence of an unlawful conspiracy. *We do not*

read the petition as stating a cause of action in the nature of a labor dispute as such. Whether the petition states a good cause of action, we think, is a question for the State court and not this Court." (Italics ours.)

B. The Trial Court and the Supreme Court of Missouri Found That the True Purpose of Petitioners' Activities Was to Violate the Anti-trade Restraint Laws of Missouri and That the Labor Dispute Feigned by Petitioners Did Not Exist.

The trial Chancellor, having heard the evidence and having observed the demeanor of the witnesses, found that no bona fide labor dispute existed between petitioners and respondent on April 7, 1952 (the date the picket lines were established) (R. 97).

The Supreme Court of Missouri, reviewing all the evidence, found:

> "* * * that no bona fide labor dispute existed between plaintiff (respondent herein) and the Machinists Union on April 7, 1952; that prior to that date defendants and the Union, both in and out of said bargaining negotiations, continued to raise specious and feigned points and issues respecting matters as to which defendants were actually in accord with plaintiff, in order to give the false impression to the public that a labor dispute existed" (265 S. W. [2d] 325, l. c. 328, 329; R. 109, parenthetical material supplied).

Having affirmed the findings of the trial chancellor, the Supreme Court of Missouri stated:

> "We think it clearly appears and we rule from the above noted substantial evidence that: (a) the above conduct of defendants and the Union, as directed against the independent construction contractors and their Millwright employees, constituted and was a conspiracy in violation of the common and

statutory law of this State; (b) that the sole and unlawful purpose of the concerted action of defendants and the Union in picketing plaintiff's plant was to effectuate the Union's unlawful conspiracy and to compel and coerce plaintiff to join said conspiracy to violate the law by acquiescing in the Union's unlawful demands; (c) that the picketing of plaintiff's plant was effected by an agreement and combination of the members of the Union in restraint of trade and that such picketing was and constituted a local transportation combination which denied and unlawfully prevented the transportation of products and commodidities to or from plaintiff's plant, and the processing and manufacturing of products and commodities therein.

"It seems clear to us that in picketing plaintiff's plant on April 7, 1952, and thereafter, defendants did so, not as the result of nor as any step in a labor dispute with plaintiff. In that picketing defendants took their final steps in their effort to coerce and compel plaintiff to become an active participant in defendants' conspiracy against the independent contractors and their Millwright Union employees. The instant picketing by the Union was for an illegal purpose" (265 S. W. [2d] 325, l. c. 330; R. 111, 112).

C. The Missouri Courts Acted on Petitioners' Coercive Conduct Which Violated Missouri Law, to Protect Respondent From Being Compelled to Commit Acts Declared to Be Felonies Under Missouri Law.

It is clear from the opinion of the Supreme Court of Missouri in the instant case that the State courts were not seeking to impose Missouri labor law on anyone. Missouri has no code of laws directed exclusively at labor relations. Nor were they seeking to invade a portion of the field of labor law preempted by Federal regulation.

In the instant case the courts of Missouri were acting with reference to proven facts, in the same manner that they have acted in numerous other instances of violations of the Missouri anti-trade restraint law. The combination of labor and industry directed against the construction contractors and their Millwright employees was found to be an illegal conspiracy under the Missouri law (R. 111).

If respondent had agreed to join this conspiracy when first approached by petitioners, or if respondent had acquiesced after hearing the blunt predictions by petitioners of the future harms that would befall respondent unless it joined the conspiracy, all coercive pressure by petitioners against respondent would have ceased at once, and respondent would have been free to operate its brewery with petitioners' blessings.

However, if respondent had so become a party to the unlawful conspiracy, respondent immediately, without taking any further action itself, would have subjected itself to the following liabilties under the laws of Missouri:

(1) Criminal liability of its individual officers as felons under Section 416.050 of the Revised Statutes of Missouri for fine and/or imprisonment.

(2) Criminal liability of the corporation under Section 416.070 of the Revised Statutes of Missouri for:

(a) Forfeiture of its corporate charter, and

(b) Forfeiture of its properties in Missouri, or

(c) Payment of a fine to the State of Missouri.

(3) Civil liability for triple damages to any person injured by any acts of the combination under Section 416.090 of the Revised Statutes of Missouri.

In addition to the civil and criminal liabilities above set out under the **Missouri** restraint of trade laws, it is sub-

mitted that if respondent had joined this unlawful combination of labor and business organizations respondent would likewise have been subject to possible prosecution under the anti-trust laws of the **United States** (Sherman Act, 26 Stat. 209, C. 647, 15 U. S. C. A., Sec. 1 et seq.) which imposes both civil and criminal penalties (**Allen Bradley Co. v. Local Union No. 3, I. B. E. W.** [1944], 325 U. S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939). Thus Federal law afforded no protection or relief for respondent if it joined said combination. Rather, the Federal law imposed additional penalties.

When respondent refused to join the conspiracy, petitioners applied coercion. The illegal conspiracy having been established to the satisfaction of the trial court, respondent was entitled to immediate relief from such coercion, including relief from the particular form of coercion then being applied: i. e., the picketing of respondent's brewery.

II.

Application of the Anti-Trade Restraint Laws of Missouri to a Labor Organization Under Similar Circumstances Was Upheld by This Court in Giboney v. Empire Storage and Ice Co.

The anti-trade restraint laws of Missouri were early upheld by this Court (e. g., **International Harvester Co. v. Missouri** [1913], 234 U. S. 199, 34 S. Ct. 859, 58 L. Ed. 1276). By their terms these laws apply without exception to **all** persons who combine to restrain freedom of trade.

In the case of **Giboney et al. v. Empire Storage and Ice Co.** (1949), 336 U. S. 490, 69 S. Ct. 684, 93 L. Ed. 834, this Court upheld the application of the Missouri anti-trade restraint laws to a labor union in circumstances similar to those here presented. The Supreme Court of Missouri upheld the injunction in the instant case in view of the

obvious similarity of the essential facts to those of the **Giboney** case.

The **Giboney** case involved an attempt by an ice handlers' Union to unionize certain individual ice peddlers who operated their own trucks in carrying on their own business of selling ice at retail. As part of the campaign the Union obtained agreements from all the manufacturers and distributors of ice in Kansas City except Empire not to sell ice to non-union peddlers. Empire refused to sign such an agreement or otherwise accede to the Union's demand that it cease selling ice to non-union peddlers, and the Union placed a picket line at Empire's plant with the resultant halting of substantially all deliveries to and from the plant by union truck drivers, stopping 85% of Empire's storage business. Empire brought suit to enjoin the picketing on the ground that it was pursuant to an unlawful combination in restraint of trade to prevent Empire from carrying on its business, including the sale of ice, and therefore the picketing was unlawful.

In upholding the injunction in the **Giboney** case, the Supreme Court of Missouri found that an unlawful combination existed between the Union and the other ice manufacturers for the purpose of refusing to sell to non-union ice peddlers, and that the Union was producing injury and damage to Empire, through a boycott of Empire's business, for the purpose of forcing Empire to join the unlawful combination or conspiracy. The combination violated the Missouri anti-trade statute, and the Supreme Court of Missouri held that since the defendant Union was using its picket line in the attempt to force Empire into this unlawful combination against the ice peddlers, the purpose of the picketing was unlawful and the picketing for the unlawful purpose would be enjoined (**Empire Storage & Ice Co. v. Giboney** [1948], 357 Mo. 671, 210 S. W. [2d] 55).

In affirming the judgment of the Supreme Court of Missouri, this Court said (336 U. S., l. c. 498, 93 L. Ed., l. c. 841):

> "* * * Thus all of appellants' activities—their powerful transportation combination, their patrolling, their formation of a picket line warning union men not to cross at peril of their union membership, their publicizing—constituted a single and integrated course of conduct, which was in violation of Missouri's valid law. In this situation, the injunction did no more than enjoin an offense against Missouri law, a felony."

This Court also said (336 U. S., l. c. 497, 93 L. Ed., l. c. 841):

> "* * * To exalt all labor union conduct in restraint of trade above all state control would greatly reduce the traditional powers of states over their domestic economy and might conceivably make it impossible for them to enforce their antitrade restraint laws. See Allen Bradley Co. v. Local Union No. 3, I. B. E. W., 325 U. S. 797, 810, 89 L. ed. 1939, 1948, 65 S. Ct. 1533. More than that, if for the reasons here contended states cannot subject union members to such antitrade restraint laws as Missouri's, neither can Congress. The Constitution has not so greatly impaired the states' or nation's power to govern."

The fact situation in the instant case is strikingly similar to that in **Giboney v. Empire Storage and Ice Co.** In each instance the defendant Union sought to extend its bargaining representation to a group which was independent of plaintiff, and for which said Union had not been certified as bargaining agent. In each instance, in furtherance of its attempts at organization, the Union demanded that plaintiff enter into an agreement with the Union to refuse to do business with the independent con-

tractors who had not recognized the Union. In the **Giboney** case the Union obtained these agreements from all other persons in plaintiff's line of business in the area involved; in this instance the Union obtained the agreement from one local brewer, and announced its intention of getting similar agreements from the remaining breweries and presumably from all other plants in the area over which it could exercise control. In both the **Giboney** case and the instant case the plaintiff refused to become a party to what under the Missouri common law and the Missouri anti-trade restraint statute is an illegal conspiracy, and in each instance the plant of plaintiff was picketed by the Union in an effort to compel plaintiff to join the conspiracy. In each case the trial Court granted a permanent injunction which was affirmed by the Supreme Court of Missouri.

In the instant case petitioners announced their unlawful purpose to compel respondent to join the conspiracy between labor and industry, and the means chosen to achieve the unlawful purpose, **before** the picketing of respondent's brewery began. At the time this announcement was made to respondent the State of Missouri had, subject to its jurisdiction, all the elements of a present existing violation of its civil and criminal laws (R. 111, 112). Picketing, the first act of the conspiracy which could be denominated a labor activity that in any way involved the employer-employee relationship between petitioners and respondent, had not yet occurred.

It is unreasonable to contend, as do petitioners, that although the jurisdiction of the State of Missouri was complete by reason of the existence of the conspiracy in violation of its civil and criminal laws, the persons guilty of the conspiracy could obtain absolute immunity from State law by going one step further along their course of misconduct.

We recognize the unquestioned rights of labor to strike and to picket when these activities are in furtherance of a **lawful** labor purpose. But labor has no immunity when it uses traditional labor forms to attain an unlawful purpose. When such a false immunity is asserted, the State of Missouri is entitled and obligated to enforce its general laws against a completed unlawful conspiracy, and to disregard the pretenses sought to be used as a shield.

That, we submit, is the doctrine of law announced by this Court in **Giboney v. Empire Storage and Ice Co.**, and it is a doctrine which is unchanged at the present time. For the reasons stated in that opinion, the decision of the Supreme Court of Missouri in the case at bar is correct.

Petitioners here seek to create an aura of labor disputation of their own fabrication around a conspiracy in violation of general Missouri law. They can, and do, point to the long standing jurisdictional dispute between Machinists and Millwrights over the moving, erecting and installing of machinery in new construction and in reconstruction of buildings. But respondent is not a party to that dispute, and the Courts of Missouri were not asked to take any action with reference to that dispute. Respondent has never, with one exception which was induced by prior actions of petitioners, done any of the work which is the subject of that jurisdictional dispute with **any** employees of respondent, either Machinist or Millwright. Respondent has no control or right of control over the employees, or the union affiliation of the employees, of the independent construction contractors whom respondent traditionally has hired to make such machinery installations (R. 106).

Therefore the attempt by coercion to force respondent to fight petitioners' battle against the independent construction contractors must fail, as it did in the **Giboney** case, and for the identical reasons.

III.

The Doctrine of the Giboney Case Permits Enforcement of the General Anti-Trade Restraint Laws of Missouri Notwithstanding the Provisions of the L. M. R. A., 1947.

A. Enforcement of the Missouri Law Was Not Impeded by the Wagner Act (N. L. R. A., 1935).

However, petitioners here contend that the **Giboney** case does not apply. They point out that the **Giboney** case, although decided in 1949, involved facts occurring prior to the effective date of the Taft-Hartley Act (Labor Management Relations Act, 1947, c. 120, 61 Stat. 136, 29 U. S. C. A., Secs. 141-187).

Thus basing their distinction on the intervention of a single Act of Congress, petitioners state that the facts of the instant case "relate to matters either protected or proscribed by the N. L. R. A., as amended, and by the L. M. R. A., 1947," and as such may not now be dealt with by a Missouri court in the manner of the **Giboney** decision.

The petitioners' contention is grounded on their erroneous assertion that:

> "In this connection it must be remembered that Congress has taken over **the field of** labor relations in interstate commerce. This means the **entire area** of such relations, not just a segment or part. Unless Congress has specifically exempted a particular part of this field, or has remained silent on the subject, or has ceded it to state control, the states are excluded and so the cases hold" (p. 21 of petition for writ of certiorari).

Contentions such as the foregoing were fully answered by the decision of this Court on June 7, 1954, in the case

of **United Construction Workers v. Laburnum Construction Corporation** (22 U. S. Law Week 4289, 26 Labor Cases [CCH] par. 68,460). In the **Laburnum** case this Court upheld the jurisdiction of the State Courts of Virginia to entertain common law tort actions for the recovery of damages caused by the very same conduct that constituted a union unfair labor practice under Section 8 (b) (1) (A) of the National Labor Relations Act, as amended.

Answering a similar contention by a Union, which apparently had cited the identical cases relied on by petitioners for this point at page 22 of their petition, this Court said (22 L. W., l. c. 4291):

> "In the **Garner** case, Congress had provided a federal administrative remedy, supplemented by judicial procedure for its enforcement, with which the state injunctive procedure conflicted. *Here Congress has neither provided nor suggested any substitute for the traditional state court procedure* for collecting damages for injuries caused by tortious conduct. For us to cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation. To do so will, in effect, grant petitioners immunity from liability for their tortious conduct. We see no substantial reason for reaching such a result. The contrary view is consistent with the language of the Act and there is positive support for it in our decisions and in the legislative history of the Act." (Italics ours.)
>
> * * * * * * *
>
> "To the extent that Congress prescribed preventive procedure against unfair labor practices, that case recognized that the Act excluded conflicting state procedure to the same end. *To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already*

committed, there is no ground for concluding that existing criminal penalties or liabilities for tortious conduct have been eliminated. The care we took in the **Garner** case to demonstrate the existing conflict between state and Federal administrative remedies in that case was, itself, a recognition that if no conflict had existed, the state procedure would have survived. The primarily private nature of claims for damages under state law also distinguishes them in a measure from the public nature of the regulation of future labor relations under federal law." (Italics ours.)

* * * * * * * *

"Considerable legislative history supports this interpretation. Under the National Labor Relations Act, 1935, there were no prohibitions of unfair labor practices on the part of labor organizations. Yet there is no doubt that if agents of such organizations at that time had damaged property through their tortious conduct, the persons responsible would have been liable to a tort action in state courts for the damage done. See **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740.

"*The 1947 Act has increased, rather than decreased, the legal responsibilities of labor organizations.* Certainly that Act did not expressly relieve labor organizations from liability for unlawful conduct. It sought primarily to empower a federal regulatory body, through administrative procedure, to forestall unfair labor practices by anyone in circumstances affecting interstate commerce. The fact that it prescribed new preventive procedure against unfair labor practices on the part of labor organizations was an additional recognition of congressional disapproval of such practices. Such an express recognition is consistent with an increased insistence upon the

liability of such organizations for tortious conduct and inconsistent with their *immunization* from liability for damages caused by their tortious practices." (Italics ours.)

B. The L. M. R. A., 1947, Has Increased, Rather Than Decreased, the Legal Responsibilities of Labor Organizations.

The language of this Court in the **Laburnum** case effectively disposes of petitioners' contention that the conspiracy which has been directed against respondent in violation of Missouri law is **protected** by the N. L. R. A., as amended, or by the L. M. R. A., 1947. Certainly, as this Court stated, the purpose of the Act of Congress incorporating these provisions was to **increase** the responsibility of labor. Therefore, since the identical conduct was enjoined by the Courts of the State of Missouri in the **Giboney** case before the passage of these laws and the injunction was upheld by this Court, the same consequences should follow from unlawful conduct after enactment of the N. L. R. A., as amended, and the L. M. R. A., 1947.

C. The Enumeration of Labor Unfair Labor Practices in the L. M. R. A., 1947, Does Not Affect the Continued Application of General Missouri Law.

1. The Missouri anti-trade restraint law deals with unlawful consequences of petitioners' conduct which are not encompassed by, or inconsistent with, the L. M. R. A., 1947.

Petitioners' alternative contention before this Court in their effort to avoid the controlling effect of the **Giboney** decision is that their conduct, whether lawful or unlawful, is "proscribed" by the N. L. R. A., as amended, and the L. M. R. A., 1947. This contention of petitioners has reference to provisions of these Acts which prohibit a **strike** under certain conditions, in order to compel assignment of

specific work. The contention, then, is that since a "strike" has been mentioned by Congress as an unfair labor practice when utilized for a particular purpose, and since petitioners did "strike," petitioners thus acquired immunity from all Missouri law, even though they were guilty of an unlawful conspiracy before the strike.

It is a unique theory of law that a person avoids the consequences of one wrong by committing another.

The facts of the instant case prove that this is not a bona fide labor dispute at all, and that such labor activities as appear herein are shams erected by petitioners in an attempt to mask the conspiracy in restraint of trade (R. 110-112). That being so, it is respectively submitted that the deliberate addition of one or more acts designated as Union unfair labor practices in Section 8 (b) of the N. L. R. A., as amended, to an existing conspiracy in restraint of trade will not serve to remove the miscreants from the jurisdiction of the State whose laws they have violated.

The case of **United Construction Workers v. Laburnum Construction Corporation** (supra) involved conduct which is a Union unfair labor practice under Section 8 (b) of the National Labor Relations Act, as amended, the amendment being a part of the Labor Management Relations Act, 1947. This Act gives the National Labor Relations Board exclusive jurisdiction over the labor consequences of conduct constituting an unfair labor practice. This same conduct violated the common law of torts of the State of Virginia.

This Court held in the **Laburnum** case that notwithstanding the provisions of the Labor Management Relations Act, 1947, *the same conduct* which constituted the unfair labor practice was subject to the jurisdiction of the State Court of Virginia for the purpose of applying the State common law for damages resulting from the tortious conduct.

It is submitted that the principle of the **Laburnum** case goes farther than is required to sustain the judgment of the Supreme Court of Missouri in the instant case.

The basis of the decision by the Supreme Court of Missouri in the instant case is that, having found a complete and actionable conspiracy of labor and industry in violation of general Missouri law, which conspiracy was established without the necessity of reference to any "labor" activities, the Courts of Missouri proceeded to enjoin an action which petitioners had taken in furtherance of the conspiracy. In so doing the Courts of Missouri were applying Missouri law which was in no sense "labor" law, to conduct which petitioners now allege was **also** an unfair labor practice under the Labor Management Relations Act, 1947.

The Supreme Court of Missouri held that the conduct in question was **not** an unfair labor practice within the meaning of that Act, basing its finding on the decision of the National Labor Relations Board in **Anheuser-Busch, Inc.**, 101 N. L. R. B. 346, No. 87, which involved the same conduct and the same parties. Respondent submits that this holding of the Supreme Court of Missouri is correct.

However, even if it is admitted, for the sake of argument, that the conduct in question **was** an unfair labor practice, the Courts of Missouri were dealing with this conduct in an entirely different field than does the Labor Management Relations Act, so that the injunction issued by the Circuit Court of Missouri and upheld by the Supreme Court of Missouri does not conflict with the power or the jurisdiction of the National Labor Relations Board.

Under the principle of the **Laburnum** case, the decision of the Supreme Court of Missouri in the case at bar is consonant with all Federal laws.

2. **That conduct of petitioners to which the Courts of Missouri applied the Missouri law is not of the type dealt with by the L. M. R. A., 1947.**

It is submitted, however, that the Supreme Court of Missouri correctly found that the conduct which violated Missouri law did not constitute an unfair labor practice under the National Labor Relations Act as amended.

In the instant case the petitioners, in furtherance of their specious assertions of a "labor dispute," filed unfair labor practice charges against respondent before the N. L. R. B. on March 24, 1952 (before the picketing was begun) on the grounds of refusal to bargain. After petitioners called the strike against respondent April 7, 1952, respondent filed counter-charges with the N. L. R. B. against petitioners on the basis of Section 8 (b) (4) (D) of the N. L. R. A., as amended. These counter-charges filed by respondent before the N. L. R. B. were necessary elements of defense before a tribunal initially selected by petitioners to bolster their asserted position of being engaged in a labor dispute with respondent. The N. L. R. B. conducted a hearing on the same basic facts which were before the Missouri courts, for the preliminary purpose of determining whether the conduct alleged in respondent's countercharge was a type over which the Board could take jurisdiction under the National Labor Relations Act as amended.

The N. L. R. B. held that the type of conduct by labor contemplated under this section of the N. L. R. A. required a present specific demand for assignment of particular work, which work was being done at the very time the specific demand was made. Since no work of the kind sought to be controlled by the unlawful conspiracy was then being done at respondent's brewery, there was, in the opinion of the Board, no "dispute" within the meaning of the N. L. R. A.

It may be noted, also, that after the respondent obtained its injunction in the State Court against the picketing, petitioners amended their charge pending before the N. L. R. B. to claim the obtaining of this injunction as an additional unfair labor practice by respondent. The N. L. R. B. refused to issue a complaint on petitioners' charges of unfair labor practices. (Administrative Decision of General Counsel of N. L. R. B., Case No. 766, August 17, 1953, par 12,776, CCH Labor Law Service, 4th Ed.)

In the spring of 1952 respondent was faced with a situation vital to its existence, which situation required immediate determination. Respondent was being subjected to powerful coercion or pressure by petitioners to force respondent to join an unlawful combination of labor and industry. The conspiracy already was complete and therefore violated the anti-trade restraint laws of Missouri.

The N. L. R. B. could not give and did not give respondent any relief from the coercion. In these circumstances, if respondent sought its own solution by joining the conspiracy, certainly neither the N. L. R. B. nor any Federal labor law could prevent respondent from being liable in civil law actions for triple damages under Section 416.090 of the Missouri statute. Neither the N. L. R. B. nor any Federal labor law could prevent respondent from being prosecuted and convicted in the criminal courts of Missouri under Section 416.070 of the Missouri statute, and punished by forfeiture of its corporate franchise and forfeiture of all or part of its property to the State.

The position of respondent was identical to that of the Empire Storage and Ice Company in the **Giboney** case, as stated by this Court (336 U. S. 490, l. c. 493, 93 L. Ed. 834, l. c. 838, 839). The language of this Court may be paraphrased as follows:

"In this dilemma, Anheuser-Busch was faced with three alternatives: It could continue to have the work of moving, erecting and installing machinery in new and expanded buildings at its brewery done by the independent construction contractors, all of whom employed Millwrights for this purpose, in which event it would be compelled to wage a fight for survival against overwhelming odds; it could refuse to deal with the independent construction contractors unless they complied with the Union's ultimatum that they employ Machinists for this purpose, thereby relieving itself from further conflict with the Union, in which event it would be subject to prosecution for crime and suits for triple damages; it could invoke the protection of the law. The last alternative was adopted."

CONCLUSION.

For the reasons hereinabove stated, we submit that petitioners' petition for the writ should be denied and pray that this be done.

Respectfully submitted,

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APPENDIX A.

Pertinent provisions of Chapter 416 of the Revised Statutes of Missouri referred to in this brief.

Chapter 416: Monopolies, Discriminations and Conspiracies.

Section 416.010, "Combination in restraint of trade declared a conspiracy":

> "Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any person or persons in restraint of trade or competition in the importation, transportation, manufacture, purchase or sale of any product or commodity in this state, or any article or thing bought or sold whatsoever, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and shall be punished as provided in sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400" (21 V. A. M. S., Sec. 416.010).

Section 416.050, "Penalties":

> "Any person violating any of the provisions of sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400 or who shall do any act prohibited or declared unlawful by the provisions of said sections, shall be adjudged guilty of a felony, * * *" (21 V. A. M. S., Sec. 416.050).

Section 416.070, "Offending corporations to forfeit charter and property":

> "Any corporation * * * which shall violate any of the provisions of sections 416.010 to 416.100, * * * may * * * be declared by the court to have forfeited its corporate rights and franchises * * *; and such court

> may, by such judgment and decree, also declare all or any part of the property of such corporation forfeited unto the state, or * * * assess against it a fine * * *" (21 V. A. M. S., Sec. 416.070).

Section 416.090, "Persons injured to recover triple damages":

> "Any person injured in his business or property by any other person or persons by reason of anything forbidden or declared to be unlawful by sections 416.010 to 416.100 * * * shall recover threefold the damages by him sustained, and the costs of the suit, including a reasonable attorney's fee" (21 V. A. M. S., Sec. 416.090).

The provisions of Chapter 416 were incorporated into Missouri statutory law in the period 1891-1907. They are in no sense "labor legislation" or "labor regulatory statutes."

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9,

Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation,

Respondent.

No. 97.

On Writ of Certiorari to the Supreme Court of the State of Missouri.

RESPONDENT'S BRIEF.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, Petitioners, vs. ANHEUSER-BUSCH, INC., a Corporation, Respondent.	No. 97.

On Writ of Certiorari to the Supreme Court of the State of Missouri.

RESPONDENT'S BRIEF.

STATUTES OF THE STATE OF MISSOURI INVOLVED.

The case involves the action of the Circuit Court of Missouri in enjoining the violation of Missouri statutes which prohibit restraints of trade and prescribe both criminal and civil penalties for violations.

The Missouri anti-trade restraint statutes are contained in Chapter 416 of the official compilation, entitled "Monopolies, Discriminations and Conspiracies" (2 Revised Statutes of Missouri, Sec. 416.010 et seq., pp. 3318-3320; 21 V. A. M. S., Sec. 416.010 et seq., pp. 849, 869-872, 877). The pertinent provisions of these statutes are set out in Appendix A of this brief.

THE QUESTION PRESENTED.

The question presented is whether conduct which violates State law, both common law and statutory law, including a State criminal statute, applicable alike to all citizens of the State, is removed from the control of the State and is therefor ungoverned because some of the parties involved in the unlawful conduct are members of a labor organization and claim immunity under the Labor Management Relations Act, 1947 (c. 120, 61 Stat. 136 et seq.).

STATEMENT OF THE CASE.

This action arose in the City of St. Louis, Missouri, in the early spring of 1952 (R. 1).

Respondent is the operator of the largest brewery in the St. Louis, Missouri, area (R. 104).

Petitioners, members of a labor organization commonly called the "Machinists", are the bargaining representatives of some 220 employees of respondent who are regularly engaged in repair and maintenance work on machinery which has already been installed by independent contractors at respondent's brewery (R. 24, 106). Petitioners have been certified by the National Labor Relations Board as bargaining representatives for these employees of respondent (R. 25).

At the time this action arose, no labor dispute existed between petitioners and respondent (R. 97, 109), and this

fact was clearly stated in the record by respondent's counsel at the outset of the presentation of evidence in the Circuit Court of St. Louis, Missouri (R. 19).

At the time this action arose, petitioners had formed a combination of labor (the petitioners) and business (Griesedieck Western Brewery Company) for the purpose of refusing to deal with any independent construction contractor in the St. Louis, Missouri, area who would not agree to break his existing collective bargaining agreement with his Millwright employees covering the moving, erecting and installing of machinery in new construction and reconstruction of buildings, and to hire Machinists for this purpose (R. 32, 24, 108, 109); all the construction contractors in the St. Louis area had valid existing contracts with the Millwrights' Union covering the doing of this work; none of the contractors had contracts with the Machinists (R. 36, 106). Petitioners intended to get all local breweries to join the combination (R. 32, 108). A combination of labor and business such as had been formed by petitioners violates the Missouri common law of restraint of trade and the Missouri anti-trade restraint statute, which is declarative of this common law, and subjects the individual members of the combination to civil liability for damages and to punishment as felons under the Missouri criminal law (R. 109, 111). Such an unlawful combination is designated a "conspiracy" under Missouri law and is frequently so referred to by its Courts.

The Supreme Court of Missouri in the instant case held this combination to be a violation of the Missouri civil and criminal law aforesaid (R. 111). At the time of suit the combination was composed of petitioners (labor) and Griesedieck Western Brewery Company (business) and had the purpose of refusing to deal with any construction contractor who did not break his existing contract with his Millwright employees. In respondent's brief, this com-

bination of labor and business is designated the **"first combination"** for convenient reference.

Petitioners wanted respondent to join the conspiracy, believing that then the other breweries in the area would follow (R. 41); however, respondent refused, upon advice of legal counsel, to violate the Missouri law (R. 34, 40, 107).

In the spring of 1952 petitioners and respondent were in the process of negotiating a new collective bargaining agreement covering the Machinist employees of respondent (R. 31).

Meeting of the minds was had on every element of the new bargaining agreement which pertained to the work performed in respondent's brewery (R. 34, 40, 108). However, petitioners selected this occasion to force respondent to join their unlawful conspiracy of labor and business (R. 40). They demanded the insertion of a certain Section 2 of Article VII in the proposed agreement, under the general heading of "Jurisdiction," and stated that this section would represent the obligation of respondent to carry out the unlawful purpose of the conspiracy (R. 32, 108).

Petitioners stated that unless respondent agreed to join this conspiracy of labor and business, petitioners would assert a specious continuing disagreement over points of the collective bargaining agreement which, in truth, had already been settled (R. 34, 110). Then, they stated, petitioners would call a strike of Machinists at respondent's plant (R. 33), and by the establishment of picket lines would prevent the commercial operation of respondent's brewery (R. 34).

Under Missouri law, if respondent joined the conspiracy of labor and business, although it remained entirely passive in its membership, respondent became subject to

criminal prosecution as a felon along with all other members for acts done by any member in furtherance of the objects of the unlawful conspiracy (R. 109).

The Supreme Court of Missouri in the instant case declared that the undertaking by the petitioners acting in concert to coerce respondent to join the unlawful conspiracy of labor and business against the Millwrights and the construction contractors was a violation of the Missouri civil and criminal law aforesaid (R. 111, 112). In respondent's brief, this concerted undertaking by petitioners to coerce respondent to commit the felony of joining the first combination is designated the "**second combination**" for convenient reference.

When respondent explained to petitioners that it would not join the unlawful first combination, on advice of counsel that it was unlawful, petitioners repeated their threats and, this failing, called a strike (R. 34). Picket lines were established (R. 24). Respondent could not get supplies or make shipments, and its food in process was in danger of spoiling (R. 33, 109, 110). The picketing of respondent's plant by the second combination, to coerce respondent to join the first combination, was declared by the Supreme Court of Missouri to be a local transportation combination which unlawfully prevented transportation of materials into and out of respondent's plant (R. 112).

After the picketing had begun, petitioners repeated that they had no dispute with respondent except over respondent's refusal to join the unlawful conspiracy of business and labor (R. 34, 40). It had to be that, said petitioners, or else respondent's plant would continue to be immobilized (R. 40, 111).

No issue of any sort, whether "labor" or "commercial," was then involved between petitioners and respondent other than participation of respondent in the unlawful first combination of labor and business against the Mill-

wrights and the independent construction contractors (R. 112). No work was then being performed on respondent's premises by anyone which was of the type that would be affected by the unlawful conspiracy (R. 36). Respondent had no facilities for doing this type of work and, with one exception provoked by petitioners, never had attempted to do so with its own employees. When the necessity for the doing of such work arose, respondent invariably contracted it out to independent construction contractors who used their own employees to do the work (R. 36, 106).

Upon respondent's complaint the Circuit Court of St. Louis, Missouri, issued a temporary restraining order against the picketing. Thereafter the trial Chancellor heard the evidence and found the above facts, and entered a permanent injunction against the picketing by the second combination which the Chancellor found was for the sole purpose of compelling respondent to participate in said unlawful first combination of business and labor (R. 83, 80).

The facts thus found by the Chancellor and the terms of the injunction were affirmed by the Supreme Court of Missouri (R. 105, 110).

SUMMARY OF ARGUMENT.

I.

This case involves the right of the Courts of Missouri to issue an injunction against picketing by a labor organization (petitioners) which constitutes the means of coercing a business organization (respondent) to commit the felony under Missouri law of joining a combination which itself is illegal under the Missouri law and under the Sherman Act.

The combination which respondent was being coerced to join was a completed combination composed of petitioners and one local brewery, for the purpose of refusing to deal with independent construction contractors until the contractors broke their valid, existing contracts with the Millwright organization. This combination is doubly illegal, first for its purpose of inducing breach of contract, and second as a combination of labor and business for the unlawful purpose.

Respondent has uniformly contended that the action of the Courts of Missouri upon this fact situation has the purpose of preserving the integrity of its laws of general application against restraint of trade, and that Federal labor law is relevant only to show that coercion to commit a felony has no sanction under any Federal law, whether bottomed on labor policy or on policy against restraint of trade.

The Courts of Missouri found the combination of labor and business to be illegal under Missouri law and that membership of respondent therein would constitute commission of a felony by respondent under the Missouri law. The Courts of Missouri found that the action of petitioners to coerce respondent to commit the felony constituted an illegal transportation combination under the Missouri law.

restraining transportation of materials into and out of respondent's brewery. The picketing by the illegal transportation combination was enjoined.

In affirming the injunction the Supreme Court of Missouri followed its established policy with respect to restraint of trade, which policy has been approved by this Court in the case of Giboney v. Empire Storage & Ice Co., and did not act in the field of labor law. Its judgment should be affirmed.

II.

If petitioners' contention that the action of the Supreme Court of Missouri was taken in the general field of labor law is accepted, its action was directed only against obviously illegal means voluntarily adopted by petitioners to achieve their ultimate objective.

The coercion of respondent to commit a felony was illegal; the completed combination of labor and business for the purpose of refusing to deal with independent construction contractors was illegal; and the action sought to be coerced from the construction contractors by the concerted refusal to deal, i. e., breach by the contractors of their existing contracts with the Millwrights, was illegal.

In these circumstances the area of labor law touched by the Courts of Missouri in enjoining a criminal restraint of trade under Missouri law is an area reserved to the States, and the conduct of petitioners in that area which was acted on by the Courts of Missouri is neither protected nor proscribed by any Federal labor law.

ARGUMENT.

I.

THE CASE PRESENTED A SITUATION OF COERCION TO COMMIT A FELONY UNDER MISSOURI LAW, AND WAS SO ACTED UPON BY THE COURTS OF MISSOURI.

Introduction.

This case involves a permanent injunction issued by the Circuit Court of the City of St. Louis, Missouri, and affirmed by the Supreme Court of Missouri. The injunction prohibits a specific type of coercion by petitioners, directed against respondent for the purpose of compelling respondent to commit an act declared to be a felony under the statutes of Missouri. Under the settled law of Missouri respondent's right to relief in these circumstances is in no way dependent upon, or limited by, the fact that petitioners are members of a labor organization.

Petitioners here contend that they have acquired a special immunity from application of Missouri law, and that this immunity arises out of the National Labor Relations Act, as amended by the Taft-Hartley Act (Labor Management Relations Act, 1947, 61 Stat. 136, C. 120, 29 U. S. C. A., Secs. 141-187).

It has been the position of respondent throughout this case that petitioners' agreement in concert with a member of the local brewing industry that brewers shall refuse to deal with independent construction contractors in the St. Louis area until these contractors break certain valid existing contracts, said agreement to be expanded to include other members of the local brewing industry as quickly as they can be coerced into joining, created a trade restraint upon the contractors, which consists of con-

certed withholding of dealing by the brewers. In respondent's brief, this combination of labor (the petitioners) and business (Griesedieck Western Brewery Company) is designated the **"first combination"** for convenient reference. An agreement for a concerted withholding of dealing has always been and still is a per se violation of the Sherman Anti-Trust Law[1] and the Anti-Trade Restraint Law (conspiracy statute) of Missouri,[2] as well as of Missouri common law, on the part of each participant or member in the combination. This fact was reaffirmed by the Supreme Court of Missouri in the instant case (R. 109). No Federal legislation has expressed or implied an intention to change this fundamental policy.

Becoming a member of this combination or conspiracy is without more a felony under Missouri law, and under Missouri law respondent is entitled to an injunction against any conduct by anyone which is directed toward coercing respondent to commit a felonious act.

Petitioners formed a **second combination**, consisting solely of its own membership, to coerce respondent to commit the felony under Missouri law of joining the unlawful combination of brewers refusing to deal with construction contractors until valid contracts had been broken. This **second combination** had a narrow and obviously illegal purpose: compelling commission of a crime by respondent, a business organization. Since the second combination utilized a stoppage of transportation into and out of respondent's plant in attempting to achieve its unlawful purpose, the second combination was a "local transportation combination" which likewise violated the Missouri Anti-Trade Restraint Statute. It was so found by the Supreme Court of Missouri (R. 112).

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[1] 26 Stat. 209, C. 647, 15 U. S. C. A., Sec. 1 et seq.

[2] 2 R. S. Mo., Sec. 416.010 et seq., set out in Appendix A of this brief.

In no stage of the proceedings did the Courts of Missouri seek to act on the **first combination** of labor and business. The Courts of Missouri did act on the **second combination** of petitioners acting in concert, and did enjoin the coercion of respondent by this second combination to commit the felony of joining the first combination.

It has been the position of respondent throughout this case that the conduct of petitioners to coerce respondent to commit a felony, although it utilized a labor "form"—picketing—should not be considered or judged within a framework of labor policy or labor law, because it was a means chosen by petitioners in an attempt to coerce respondent to violate the general Missouri law, and the felony if committed by respondent would exist independent of and without regard to any "labor law," State or Federal.

That is why respondent earnestly contends that the instant case between petitioners and respondent is neither a "labor dispute" nor an "unfair labor practice." The **motives** or indirect objectives now claimed by petitioners must be disregarded because the **means** which they have selected are per se a violation of State and Federal anti-trade restraint laws and run afoul of common decency.

A. Respondent's Original Petition Alleged All the Necessary Facts Showing Restraint of Trade and Sought the Remedy of Injunction Under the Laws of Missouri. The Case Was Presented on That Theory.

At the outset of the hearing of the evidence before the trial Chancellor in the Circuit Court of Missouri, the position of respondent was stated by its counsel as follows (R. 19):

> *"The plaintiff (respondent here) does not wish to be understood as in any way contending in this case that this Court has before it for consideration, decision or resolution, by this Court, a labor dispute.*

"There is reference in the petition to a labor dispute and to a jurisdictional dispute between two labor unions. Those matters were, we believe, necessarily referred to in the petition, and we believe that they will necessarily also be referred to in the evidence.

"*The plaintiff, however, does not request any action by this Court with respect to, or with respect to resolving those labor controversies.*" (Italics and parenthetical matter ours.)

Judge Hulen of the United States District Court approved the position of respondent when this case was removed there by petitioners, on the ground that it involved a labor dispute over which the Federal tribunals have exclusive jurisdiction. In his memorandum opinion remanding the case to the State court, Judge Hulen said:

"*We do not read the petition as stating a cause of action in the nature of a labor dispute as such. Whether the petition states a good cause of action, we think, is a question for the State court and not this Court.*" (Italics ours.)

Respondent submits that clearly the foregoing rationale was properly applied by the Supreme Court of Missouri in dealing only with the second, or "local transportation combination" of petitioners, which the Court held to be illegal under the Missouri Anti-Trade Restraint statute and enjoined. However, respondent further submits that the result would not be altered if, as petitioners contend, all the facets of their dispute with the Millwrights and the motives and means of the **first combination** of labor and business must be examined in order to determine whether the injunction of the Supreme Court of Missouri against the **second combination** will stand. The same result will follow in either instance because not only is the second combination illegal as the means of coercing commission of a felony by respondent, but the first combination is illegal as the means of coercing breach of valid existing con-

tracts by the independent construction contractors, and additionally is illegal as a combination of labor and business for that illegal purpose. Such illegal means voluntarily adopted by petitioners will not be removed from the jurisdiction of the State whose laws they violate merely because petitioners, members of a labor organization, cite their ultimate objective of more jobs and better conditions for the membership which will come to pass in the period after all the felonious and otherwise illegal conduct has been completed.

The petition or complaint initially filed by respondent before the Circuit Court of the City of St. Louis alleged all the facts ultimately found by the Trial Chancellor and by the Supreme Court of Missouri. These facts included, as necessary background, the entire course of conduct of petitioners in their long standing jurisdictional dispute with the Millwrights, and petitioners' combination of labor and business and its purpose as against the Millwrights and contractors, as well as the strike at respondent's plant and the picketing of respondent's premises by petitioners to compel respondent to become a member of petitioners' combination of labor and business. The petition prayed only relief from petitioners' coercive picketing, in the form of an injunction under Missouri law, but it stated respondent's legal conclusion that the strike and the picketing also violated certain phases of Section 8 (b) (4) of the National Labor Relations Act as amended.

Respondent believed then, as it believes now, that if conduct is illegal per se under Federal anti-trust law and State anti-trust law because irrespective of any labor connotations it is coercion to commit a felony, the fact that one of the participants in the illegal conduct is a labor organization and **additionally** commits one or more acts which violate the N. L. R. A. does not deprive the State Court of jurisdiction to apply its laws to prevent the felony from being committed, where that application does

not require any consideration or determination of the legitimacy of any labor objectives.

Respondent never asked the State Courts to **apply** any Federal law, and the Trial Chancellor and the Supreme Court of Missouri clearly stated in their opinions that their decision was reached independently of any Federal law. It is now clear, on the basis of decisions of the N. L. R. B. and the Federal Courts that Section 8 (b) (4) of the N. L. R. A. requires that "presently existing work" be involved in Union demands, and so Section 8 (b) (4) did not cover the fact situation which had occurred at the time the Missouri Court assumed jurisdiction. Consequently the legal conclusions alleged in respondent's pleading before the Circuit Court, that petitioners' conduct also violated Section 8 (b) (4), were erroneous. These legal conclusions—whether valid or erroneous—were in any event mere surplusage under Missouri rules of civil procedure. They were not used by the Missouri Courts as a basis of their decision and consequently cannot affect the decision of the Supreme Court of Missouri based on grounds exclusively within State jurisdiction.

B. The Trial Chancellor and the Supreme Court Acted Upon Uncontroverted Facts Showing Restraint of Trade and Not Upon the Labor Dispute Asserted by Petitioners.

Petitioners in their pleadings, evidence and arguments before the Courts of Missouri sought to conjure up a labor dispute to mask their first combination of labor and business which violated the Missouri Anti-Trade Restraint law, and to mask their second combination of union members to compel respondent to join the first combination. Accordingly they emphasized an alleged collective bargaining dispute over payroll information (R. 70), equated the express language of the controversial Section 2 of Article VII to protection against a run-away shop (R. 68),

explained the picket line as solely an effort to get respondent to bargain in good faith (R. 71), and generally contended in argument that respondent was seeking to restrain their advancement of normal labor objectives.

But the Supreme Court of Missouri, sitting as a Chancery Court of original impression, had before it positive uncontroverted evidence of statements made by petitioners **before** any strike was called or any picket line set up, at a time when they falsely hoped that respondent would join their unlawful combination of labor and industry, and positive uncontroverted evidence of statements made by petitioner Weber **after** the picket line had been set up, when petitioners believed respondent would be compelled by their coercion to join the combination. These statements showed the language of Section 2 of Article VII was a mere sham or pretense for the actual agreement and action demanded by petitioners from the brewers of the St. Louis area. The true agreement and action demanded was a concerted refusal to deal with any construction contractor unless that contractor bound himself not to use Millwrights on the job (R. 32); that all the construction contractors in the area then had valid, exclusive contracts existing with Millwrights for the work, and no contractors had contracts with petitioners (R. 36); that to get business from the breweries in these circumstances the contractors would have to break their existing valid contracts with the Millwrights (R. 36); that respondent, if a member of the combination, was expected by petitioners to put the pressure on the contractors to this end, and that petitioners anticipated that the rest of the breweries in the area would follow respondent's lead (R. 40); that petitioners succeeded in recruiting one brewery (Griesedieck Western Brewery Company) in the area in the combination (R. 24).

Petitioner Weber, although in court, did not take the stand to refute this testimony.

1. The First Combination of Labor and Business Is Illegal Per Se. Membership of Respondent in the First Combination Would Be a Felony Under Missouri Law.

The Supreme Court of Missouri held from the uncontroverted substantial evidence that petitioners **had formed** a combination of labor and business for the purpose of causing a breach of contract between construction contractors and Millwrights. It stated the unquestioned general law in Missouri, as well as nationally, that

> "'A combination for the purpose of causing a breach of contract has been held to be an unlawful conspiracy * * * ' Rosen v. Alside, Mo Sup., 248 S. W. (2) 638, 643" (R. 112).

The Supreme Court of Missouri held that this unlawful combination or conspiracy of labor and business (the first combination) violated the Missouri Anti-Trade Restraint statute, and that the labor participants and the business participants in such an unlawful conspiracy all are responsible under the Missouri Anti-Trade Restraint statute, upon the authority of **Giboney v. Empire Storage & Ice Co.**, 336 U. S. 490, 60 S. Ct. 685, 93 L. Ed. 834 (R. 114).

The Supreme Court of Missouri held that if respondent joined the first combination it would be guilty of a felony under that same Missouri Anti-Trade Restraint statute (R. 109).

The Supreme Court of Missouri further found an unlawful combination composed exclusively of petitioners (the second combination) acting in concert through picketing to restrain transportation of goods into and out of respondent's plant, for the unlawful purpose of compelling respondent to commit the felony of joining the first combination (R. 111, 112). The injunction in the instant case is directed only against the picketing by the second combination.

The finding by the Supreme Court of Missouri of the completed first combination of labor and business for the purpose of inducing breach of contract, of which combination petitioners are members and agents, is established entirely without the necessity of reference to respondent, and without necessity of reference to any relationship or negotiations between petitioners and respondent.

The finding that this completed combination is forbidden by the Missouri Anti-Trade Restraint statute is unquestionably correct. A concerted refusal by business organizations to deal with other business organizations violates the Missouri statute even though no labor organization is a party. Each member of the combination is responsible, criminally and civilly under the statute, for all acts of any member [**Dietrich v. Cape Brewery & Ice Co.** (1926), 315 Mo. 507, l. c. 521, 286 S. W. 38, l. c. 43; **Walsh v. Assoc. of Master Plumbers** (1902), 97 Mo. App. 280, 71 S. W. 455]. The conduct is of the type described as being illegal *per se* under the Sherman Act.[3]

It has never been seriously contended under either Missouri or Federal law that participation of a labor organization in the unlawful combination serves to relieve the **business** members from criminal or civil liability under the anti-trade restraint statutes. The cases of labor-business combinations are concerned only with contentions of labor organizations that their conduct should be (or should remain) immune from operation of the trade restraint law. Under the Missouri Anti-Trade Restraint statute labor **as** labor has no special immunity, and this

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[3] U. S. v. Columbia Steel Co. (1948), 334 U. S. 495, 522, 68 S. Ct. 1107, 1121, 92 L. Ed. 1533, 1551. This Court, speaking through Mr. Justice Reed, said: "For example, where a complaint charges that the defendants have engaged in price fixing, or have concertedly refused to deal with non-members of an association, or have licensed a patented device on condition that unpatented materials be employed in conjunction with the patented device, * * * such restraints are illegal *per se*."

Court has upheld the application of the Missouri statute to the labor members of a combination of labor and business which had the purpose of refusing to deal with certain non-union ice peddlers. The combination had been found to be illegal under the Missouri Anti-Trade Restraint statute (Giboney v. Empire Storage & Ice Co., supra).

Under the Federal Anti-Trust laws, this Court has held that the special immunities granted to labor will not prevent application of the Sherman Act to a labor organization which combines with business in actions which, if undertaken by business alone, would violate the Act [**Allen Bradley Co. v. Local Union No. 3** (1944), 325 U. S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939].

It is submitted that on the authority of these decisions membership in the completed first combination of petitioners (labor) and one local brewer (business) for the purpose of a concerted refusal to deal with construction contractors who did not break valid existing contracts was an activity **illegal per se for both labor and business under both** the State Anti-Trade Restraint law and the Federal Anti-Trust laws; but in any event it is a certainty that the membership therein of **respondent**, an additional representative of business, would be a violation of the Missouri Anti-Trade Restraint statute by respondent amounting to commission of a felony.

2. **The Second Combination, Composed of Petitioners Acting to Coerce Respondent to Commit the Felony, Likewise Is Illegal, and Its Activities Against Respondent Properly Were Enjoined.**

The Supreme Court of Missouri was not asked to act upon, and did not purport to act upon, the completed unlawful combination of labor and business (the first combination) and it did not in any way restrict the operation of that combination except with respect to the specific

concerted conduct of petitioners directed toward the coercion of respondent to join the first combination. This is the point of the Supreme Court's decision which is overlooked or ignored by petitioners, by the brief of The Congress of Industrial Organizations, and by the article "Federalism in the Law of Labor Relations" by Professor Cox in Volume 67, Harvard Law Review, page 1297, relied on by petitioners. We submit that this point is decisive of the issue raised by petitioners before this Court, because it demonstrates that the Supreme Court of Missouri in affirming the injunction against the picketing by petitioners (the second combination) was not required to consider labor law, or to make policy decisions in the field of labor law under the guise of applying the Missouri Anti-Trade Restraint law, as is so strongly contended here by petitioners and by the *Amicus Curiae*.

The Supreme Court of Missouri had before it the prayer of respondent, a Missouri corporation which thus far had resisted joining the completed unlawful first combination of labor and business. Respondent prayed that it be relieved from acts of coercion by petitioners, who were acting in concert in their second combination to compel respondent to join the first combination. In acting upon the petition the Supreme Court of Missouri initially had to find, and did properly so find, that a Missouri corporation which became a member of the combination proved by the substantial evidence was guilty of a felony under the Missouri Anti-Trade Restraint law and subject to the penalties prescribed in that law, even if the corporation took no affirmative steps beyond becoming a member (R. 109). The penalties are substantial, entailing:

(1) Criminal liability of its individual officers as felons under Section 416.050 of the Revised Statutes of Missouri for fine and/or imprisonment.

(2) Criminal liability of the corporation under Section 416.070 of the Revised Statutes of Missouri for:

(a) Forfeiture of its corporate charter, and

(b) Forfeiture of its properties in Missouri, or

(c) Payment of a fine to the State of Missouri.

(3) Civil liability for triple damages to any person injured by any acts of the combination under Section 416.090 of the Revised Statutes of Missouri.

Having so found, the Supreme Court of Missouri granted only relief from coercion to commit a felony, and said relief was in the form of an injunction against the type of coercion being then exerted, i. e., picketing by a combination of individuals (the second combination).

The fact that the persons attempting to coerce respondent to commit a felony in this case are members of a labor organization, and that these persons were using non-violent picketing which stops the flow of commerce and transportation into respondent's plant as their weapon of coercion, does not deprive the Courts of Missouri of authority to issue the injunction against coercion under authority of the Missouri Anti-Trade Restraint Act. The conduct of petitioners, whatever its nature, being for an unlawful purpose, was itself unlawful, and being concerted and in restraint of the flow of transportation was a "transportation combination" which violated the Missouri statute. That is the holding of the Supreme Court of Missouri (R. 112). And a labor organization which violates the Missouri statute by doing an act illegal per se (coercion of respondent to commit a felony) has no immunity **as labor** under the Missouri statute. That was the precise holding of this Court in the **Giboney** case, supra.

3. The Fact Situation Found by the Courts of Missouri Is Governed by Giboney v. Empire Storage & Ice Co. (1949), 336 U. S. 490.

The **Giboney** case involved an attempt by an ice handler's Union to unionize certain individual ice peddlers who

operated their own trucks in carrying on their own business of selling ice at retail. As part of the campaign the Union obtained agreements from all the manufacturers and distributors of ice in Kansas City except Empire not to sell ice to non-union peddlers. Empire refused to sign such an agreement or otherwise accede to the Union's demand that it cease selling ice to non-union peddlers, and the Union placed a picket line at Empire's plant with the resultant halting of substantially all deliveries to and from the plant by union truck drivers, stopping 85% of Empire's storage business. Empire brought suit to enjoin the picketing on the ground that it was pursuant to an unlawful combination in restraint of trade to prevent Empire from carrying on its business, including the sale of ice, and therefore the picketing was unlawful.

In upholding the injunction in the **Giboney** case, the Supreme Court of Missouri found that an unlawful combination existed between the Union and the other ice manufacturers for the purpose of refusing to sell to non-union ice peddlers, and that the Union was producing injury and damage to Empire, through a boycott of Empire's business, for the purpose of forcing Empire to join the unlawful combination or conspiracy. The combination of labor and business violated the Missouri anti-trade restraint statute, and the Supreme Court of Missouri held that since the defendant Union was using its picket line in the attempt to force Empire into this unlawful combination against the ice peddlers, the purpose of the picketing was unlawful and the picketing for the unlawful purpose would be enjoined (**Empire Storage & Ice Co. v. Giboney** [1948], 357 Mo. 671, 210 S. W. [2d] 55).

In affirming the judgment of the Supreme Court of Missouri, this Court said (336 U. S., l. c. 498, 69 S. Ct., l. c. 688, 93 L. Ed., l. c. 841):

> "• • • Thus all of appellants' activities—their powerful transportation combination, their patrolling,

their formation of a picket line warning union men not to cross at peril of their union membership, their publicizing—constituted a single and integrated course of conduct, which was in violation of Missouri's valid law. In this situation, the injunction did no more than enjoin an offense against Missouri law, a felony."

This Court also said (336 U. S., l. c. 497, 69 S. Ct., l. c. 688, 93 L. Ed., l. c. 841):

"* * * To exalt all labor union conduct in restraint of trade above all state control would greatly reduce the traditional powers of states over their domestic economy and might conceivably make it impossible for them to enforce their antitrade restraint laws. See Allen-Bradley Co. v. Local Union No. 3, I. B. E. W., 325 U. S. 797, 810, 65 S. Ct. 1533, 1540, 89 L. Ed. 1939, 1948. More than that, if for the reasons here contended states cannot subject union members to such antitrade restraint laws as Missouri's, neither can Congress. The Constitution has not so greatly impaired the states' or nation's power to govern."

Petitioners make an untenable point at pages 34-35 of their brief that the **Giboney** case is not in point because it contains no reference to the National Labor Relations Act of 1935 (29 U. S. C., Sec. 151-166, then in force) or to the alleged "pre-emption" by Congress of the field of labor law. We submit that such references do not appear in the **Giboney** decision for the very reason that respondent contends they have no application in the instant case. The only issues before the Courts of Missouri in the **Giboney** case and in the instant case were:

(1) whether membership by respondent (a business organization) in the combination of labor and business (the first combination) would be the commission of a felony by respondent, and

(2) whether the combination of petitioners (the second combination) was being used to compel respondent to join the first combination.

Neither of these issues required any determination of labor matters or resolution of labor policies.

In the **Giboney** case and in the instant case the Supreme Court of Missouri determined both issues affirmatively, and the injunction in each case was applied only against the second combination of petitioners acting in concert to make respondent commit a felony.

II.

IF THE COURTS OF MISSOURI ACTED IN THE FIELD OF LABOR LAW, THEY ACTED IN AN AREA RESERVED FOR THE STATES.

As stated in the preceding section of this brief, we believe that direct conduct to compel a business to commit a breach of State criminal law amounting to a felony is so direct an interference with the internal affairs of a State that the State may act under its police powers for the preservation of its legal system. We do not consider this to be action by the State in the field of **labor law**, regardless of how broadly or how narrowly that field is defined. We believe that the Supreme Court of Missouri so decided, and that it decided correctly.

However, if it is conceded for the sake of petitioners' entire argument that the Supreme Court of Missouri acted in the field of labor law, it is clear that the entire field has not been foreclosed to State action, and it is submitted that any action of the State of Missouri in the instant case deemed taken in the field of labor law lies in that area left by Congress for the States.[4]

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[4] "However, as to coercive tactics in labor controversies, we have said of the National Labor Relations Act what is equally true of the Labor Management Act of 1947, that 'Congress designedly left

Petitioners' argument reasons backward from their assertion that "the essential interest, purpose and object in this case is to further the advantage of the Machinists" (Petrs' Br., p. 19). More exactly, petitioners' purpose was to get for their membership future work as employees of independent construction contractors, which work the contractors by valid existing contracts had agreed to give to the Millwrights.[5]

A. Petitioners' Labor Activities Were Feigned, and Were the Means of Coercing Commission of a Felony.

The Supreme Court of Missouri found from uncontroverted evidence that the language of Section 2 of Article VII was intended to be a mere sham or pretext for an actual agreement by the brewing industry to "go along" —or act in concert—to "put pressure on," or force contractors to break their valid contracts with Millwrights and employ Machinists (R. 111). The Court had before it competent evidence of statements by petitioners before the picketing began, that this was the only issue between petitioners and respondent, and that although petitioners would thereafter continue to make additional demands

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open an area for state control' and that 'the intention of Congress to exclude the States from exercising their police power must be clearly manifested.' Allen Bradley Local U. E. R. M. W. v. Wisconsin Employment Relations Bd., 315 U. S. 740, 749, 750, 86 L. Ed. 1154, 1164, 1165, 62 S. Ct. 820." International Union v. Wisconsin Empl. Rel. Bd. (Briggs & Stratton case), 336 U. S. 245, 253, 69 S. Ct. 516, 521, 93 L. Ed. 651, 662.

[5] Regardless of the literal meaning of Section 2 of Article VII, the work in question was construction work never done by ANY employees of respondent, regardless of affiliation, but always and necessarily contracted out to builders equipped for such projects (R. 38). There was no question of loss of work by employees of respondent, nor of making additional work for additional employees of respondent, nor of assignment of work within the job content of any of respondent's employees. Thus petitioners' purpose was not to prevent "subcontracting" or "contracting out" of production work by respondent, as is suggested by the brief of the *amicus curiae* at pages 23-27, and the authorities there cited.

and allegations of bargaining disputes these would be mere specious contentions of disagreement made as a matter of strategy, so that petitioners would not have to acknowledge their true position openly (R. 34).

August A. Busch, Jr., respondent's president, testified to similar admissions made to him by petitioner Lloyd Weber, Business Agent of the Machinists, after the picketing had begun. This testimony was given in open court, in the presence of Mr. Weber, without any contradiction whatever (R. 40, 41, 110, 111). If this conduct of petitioners be deemed to have the **form** of labor activity, it nevertheless has the **substance** and reality of a trade restraint which is universally condemned, and which traditionally has been subject to the power and authority of the States.

In **United Construction Workers v. Laburnum Construction Corporation** (1954), 347 U. S. 656, 74 S. Ct. 833, 98 L. Ed. 1025, this Court held that the States retain jurisdiction to apply their tort law of general application and their criminal laws of general application to unlawful conduct of a labor organization, notwithstanding the fact that the same conduct also violates Section 8 of the N. L. R. A. as amended. This Court said (347 U. S., l. c. 666, 98 L. Ed., l. c. 1032):

> "The 1947 Act has increased, rather than decreased, the legal responsibilities of labor organizations. Certainly that Act did not expressly relieve labor organizations from liability for unlawful conduct."

The **second combination**, which was composed exclusively of petitioners for the purpose of coercing respondent to commit a felony under Missouri law, existed in completed form before the picket line was established. Its unlawful purpose was announced to respondent before the picket line was established (R. 33, 34). At the time the announcement was made, the State of Missouri had subject to its jurisdiction all the elements of a presently exist-

ing violation of its civil and criminal Anti-Trade Restraint laws (R. 111, 112). It is unreasonable to contend, as do petitioners, that **thereafter** petitioners could achieve absolute immunity from State law by going one step further (picketing) along their course of unlawful conduct and then asserting that they were answerable only to Federal authority.

B. Federal Labor Law Neither Proscribes Nor Permits the Conduct Acted on by the Courts of Missouri.

Coincident with the establishment of petitioners' picket line around respondent's plant, respondent filed an unfair labor practice charge with the NLRB, which then had before it petitioners' charges against respondent of alleged refusal to bargain. Respondent's charge was filed under Section 8 (b) (4) (D), which states:

> "It shall be an unfair labor practice for a labor organization * * * to engage in * * * a strike * * * where an object thereof is * * * forcing or requiring any employer to assign particular work to employees in a particular labor organization * * *."

A hearing was held before a hearing officer of the Board under Section 10 (k) of the Act, which provides that:

> "whenever it is charged that any person has engaged in an unfair labor practice within the meaning of Section 8 (b) (4) (D) of the Act, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen * * *."

The Board held that Section 8 (b) (4) (D) requires a present demand for assignment of **particular** (i. e., presently existing) work. Petitioners were making demands as to work which would be required in the future, but were not then demanding the assignment of presently

existing work for the reason that none existed at the time. Respondent did not contend that the demands related to presently existing work, but erroneously believed the Section applied as well to present demands for future work.

The Board stated in its decision (101 NLRB 346):

> "* * * Accordingly, we conclude that no dispute within the meaning of the Act was created either when the strike action was taken or when the incorporation of the provision in question was demanded.
>
> "As we have found on the record before us no 'dispute' within the meaning of Sections 8 (b) (4) (D) and 10 (k), we shall quash the notice of hearing issued in this proceeding."

Since the power of the Board to act in these circumstances is the power "to hear and determine the **dispute** * * *," it is submitted that the Supreme Court of Missouri correctly held that the NLRB, by finding that the unquestioned facts were not a "dispute" within the meaning of Section 8 (b) (4) (D) and 10 (k), necessarily found that the Board had **no** power to hear the facts involving petitioners and respondent and to enter a determination with respect thereto.

Yet there remained the uncontroverted facts which were before the Supreme Court of Missouri, of coercion by petitioners against respondent to compel respondent to join other businesses in concerted action to compel breach of contract. This was coercion of respondent to commit a felony under Missouri law. Certainly the NLRB in holding that certain facts did not constitute a "dispute" to which Section 8 (b) (4) (D) applied was not making a finding as to the truth of the facts presented, or whether they established coercion of respondent to commit a felony, which was the only issue for decision by the Missouri Court.

And certainly a finding by the NLRB that certain facts did not constitute a "dispute" in which Section 8 (b) (4) (D) would forbid a **strike** was not a finding that one of the facts—picketing—was therefore protected from action by a State court where that picketing was the means of coercing commission of a non-labor felony in violation of a Missouri law of general application.[6]

On the contrary, it is submitted that the decision of the NLRB supports the conclusion that even if the picketing by petitioners is looked upon as a "labor activity," it was conduct neither

> "made a right under federal law nor a violation of it and which had the coercive effect obvious in this device" (International Union v. Wisc. Empl. Rel. Bd., Briggs & Stratton case [1949], 336 U. S., l. c. 265, 69 S. Ct., l. c. 527, 93 L. Ed., l. c. 669, quoted by the Supreme Court of Missouri in its opinion, R. 118).

C. State Anti-Trust Laws Remain Applicable Within the Field of Labor Law Upon the Fact Situation Found by the Courts of Missouri

Such conduct remains subject to the general law of the State to the same extent as any other criminal or quasi-criminal conduct which has no "labor activity" overtones. It is conduct coming within the area of permissive state court action under the test proposed by Professor

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[6] "Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied. The Labor Management Relations Act declared it to be an unfair labor practice for a union to induce or engage in a strike or concerted refusal to work where an object thereof is any of certain enumerated ones. Sec. 8 (b) (4), 61 Stat. 140, 141, c. 120, 29 USCA, Sec. 158 (b) (4), 9 FCA, title 29, Sec. 158 (b) 4. Nevertheless the conduct here described is not forbidden by this Act and no proceeding is authorized by which the Federal Board may deal with it in any manner." (Briggs & Stratton case, supra, note 4, 336 U. S., l. c. 253, 69 S. Ct., l. c. 521, 93 L. Ed., l. c. 662.)

Cox in the article "Federalism and Labor Relations" (Cox and Seidman, 64 Harvard Law Review 211, l. c. 240):

> "The state courts can no longer apply their common law doctrines to labor disputes affecting commerce. * * * But one must be careful not to press the logic too far. Congress cannot be supposed to have forbade the application of all state laws merely because they impinge upon the concerted conduct of employees in relation to their employer. Congress was primarily concerned with developing a national policy looking toward the adjustment of the often conflicting interests of employers and employees. At times other public interests become involved in such a controversy and where they are predominant, it would seem to lose some of the qualities of a labor dispute. A strike to compel an employer to commit murder or to bribe a public official is not a problem of labor relations, nor is a strike to compel an employer to enter into an illegal combination to fix prices at which goods are sold. The problem of classification is not always so easy, but the point at which other public interests become clearly predominant over concern for adjustment of the conflict between employer and employees should mark, we submit, the limits of exclusive federal control."

The same test was proposed by Professor Cox in his article "Federalism in Labor Law" to which petitioners make extensive reference (67 Harvard Law Review 1297, l. c. 1330, 1331):

> "* * * Applied conversely the suggested test permits the enforcement of any general rules treating the same misconduct as unlawful without regard to whether it occurs in, or outside of, a context of labor-management relations. A union may be prosecuted for a combination to fix the price at which goods are

sold or for refusing to furnish men to foreign contractors in order to preserve local construction jobs for local firms. Similarly, the federal law would not preclude prosecuting a union for erecting geographical trade barriers such as the monopoly of sales of electrical equipment which Local 3 of the Electrical Workers established for New York manufacturers. Such direct restraints on competition are treated as per se violations of the antitrust laws, without regard to whether the originator of the restraint is employer or labor union, because the risk of consumer injury overrides all other consideration."

It is submitted, then, that even the arguments and tests adopted by petitioners herein, on the assumption that the action of the Supreme Court of Missouri has invaded the field of labor law, would not prevent State action to enjoin a per se violation of the State anti-trust law, and picketing to coerce respondent to commit a felonious violation of the State anti-trust law undoubtedly qualifies as a per se violation of that State law.

Unfortunately, Professor Cox's analysis of the decision of the Supreme Court of Missouri in the instant case is predicated on the erroneous assumption that the Missouri court sat in judgment of the first combination between labor and business, and enjoined the picketing because the end sought by the first combination would operate to restrain trade. This assumption leads to his conclusion that the Supreme Court of Missouri was seeking, by application of its Anti-Trade Restraint statute, to effect a determination of the labor policy involved in a change of bargaining representatives for the Millwrights employed by the independent construction contractors.

Instead, it is clear that the Supreme Court of Missouri found with respect to the first combination of labor and business merely that membership of respondent therein

would constitute a felony, since membership in that combination involved pressure by the business members upon the construction contractors to compel breach of existing contracts, enforced by a concerted refasal to deal with the contractors.

Thus it is submitted that properly considered, the decision of the Supreme Court of Missouri did no more than enjoin coercion by the second combination (petitioners) to compel respondent to commit a felony—a decision comparable to enjoining picketing to compel an individual to commit murder.[7]

In the spring of 1952 respondent was faced with a situation vital to its existence, which situation required immediate determination. Respondent was being subjected to powerful coercion or pressure by petitioners to force respondent to join an unlawful combination of labor and business. The conspiracy already was complete and therefore violated the anti-trade restraint laws of Missouri.

The NLRB **could not** give and did not give respondent any relief from the coercion. In these circumstances, if respondent sought its own solution by joining the conspiracy, certainly neither the NLRB nor any Federal labor law could prevent respondent from being liable in civil law actions for triple damages under Section 416.090 of the Missouri statute. Neither the NLRB nor any Federal labor law could prevent respondent from being prosecuted and convicted in the criminal courts of Missouri under Section 416.070 of the Missouri statute, and punished by forfeiture of its corporate franchise and forfeiture of all or part of its property to the State.

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[7] The analogy is not unfairly drawn. Conviction of an individual of the felony of murder can result in the loss of the individual's life. Conviction of a corporation of the felony of violation of the Missouri Anti-Trade Restraint law can result in loss of the corporation's charter—its life under State law.

The p sition of respondent was identical to that of the Empire Storage and Ice Company in the **Giboney** case, as stated by this Court (336 U. S. 490, l. c. 493, 93 L. Ed. 834, l. c. 838, 839). The language of this Court may be paraphrased as follows:

> "In this dilemma, Anheuser-Busch was faced with three alternatives: It could continue to have the work of moving, erecting and installing machinery in new and expanded buildings at its brewery done by the independent construction contractors, all of whom employed Millwrights for this purpose, in which event it would be compelled to wage a fight for survival against overwhelming odds; it could refuse to deal with the independent construction contractors unless they complied with the Union's ultimatum that they employ Machinists for this purpose, thereby relieving itself from further conflict with the Union, in which event it would be subject to prosecution for crime and suits for triple damages; it could invoke the protection of the law. The last alternative was adopted."

CONCLUSION.

For the reasons hereinbefore stated, we submit that the judgment below should be affirmed and pray that this be done.

Respectfully submitted,

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APPENDIX A.

Pertinent provisions of Chapter 416 of the Revised Statutes of Missouri referred to in this brief.

Chapter 416: Monopolies, Discriminations and Conspiracies.

Section 416.010, "Combination in restraint of trade declared a conspiracy":

> "Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any person or persons in restraint of trade or competition in the importation, transportation, manufacture, purchase or sale of any product or commodity in this state, or any article or thing bought or sold whatsoever, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and shall be punished as provided in sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400" (21 V. A. M. S., Sec. 416.010).

Section 416.050, "Penalties":

> "Any person violating any of the provisions of sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400 or who shall do any act prohibited or declared unlawful by the provisions of said sections, shall be adjudged guilty of a felony, * * *" (21 V. A. M. S., Sec. 416.050).

Section 416.070, "Offending corporations to forfeit charter and property":

> "Any corporation * * * which shall violate any of the provisions of sections 416.010 to 416.100, * * * may * * * be declared by the court to have forfeited its corporate rights and franchises * * *; and such

court may, by such judgment and decree, also declare all or any part of the property of such corporation forfeited unto the state, or * * * assess against it a fine * * *" (21 V. A. M. S., Sec. 416.070).

Section 416.090, "Persons injured to recover triple damages":

"Any person injured in his business or property by any other person or persons by reason of anything forbidden or declared to be unlawful by sections 416.010 to 416.100 * * * shall recover threefold the damages by him sustained, and the costs of the suit, including a reasonable attorney's fee" (21 V. A. M. S., Sec. 416.090).

The provisions of Chapter 416 were incorporated into Missouri statutory law in the period 1891-1907. They are in no sense "labor legislation" or "labor regulatory statutes."

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No. 97

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REED, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT No. 9, *Petitioners*.

v.

ANHEUSER-BUSCH, INC., a Corporation

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 97

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REED, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT No. 9, *Petitioners.*

v.

ANHEUSER-BUSCH, INC., a Corporation

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE*

INTRODUCTION

This brief *amicus curiae* is submitted by the Congress of Industrial Organizations with the consent of the parties, as provided for in Rule 42 of the Rules of this Court. It is submitted by the CIO because of the importance of the issue involved to all labor organizations, which would be threatened by the progressive deterioration of the rights

guaranteed them by the federal Labor-Management Relations Act through separate and inconsistent state action if the decision below is permitted to stand.

STATEMENT

This case concerns a dispute between the parties over the terms of a collective bargaining agreement. Petitioners compose the membership of the Machinists Union employed by respondent. The union was certified as the collective bargaining representative in an appropriate unit in respondent's St. Louis plant, by action of the National Labor Relations Board (R. 25).

In the agreement applicable to the calendar year 1951, the parties agreed to the following language inserted after the definition of the work jurisdiction covered by the agreement:

> "In the event it becomes necessary to have such work hereinbefore described contracted out, the Employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations." (R. 94).

This language was apparently adopted after consultation with the National Labor Relations Board. (R. 69).

When negotiations for a new collective bargaining agreement were in progress, beginning in December, 1951, pursuant to notices sent by the Union in compliance with the Act (R. 25, 69), respondent notified the union that it wished to discontinue the above clause. Petitioners were unwilling to agree to the deletion of this clause. They explained to respondent that they regarded the clause as absolutely necessary to protect the work of their bargaining unit, as defined in the agreement, and to protect their working standards. Nevertheless, the company refused to sign an agreement containing this clause.

When it became clear no agreement would be forthcoming without such action, petitioners called a strike and peacefully picketed respondent's plant.

Both the union and the company filed unfair practice charges under the Federal Act. On the union charge that the company was not bargaining in good faith, originally filed on March 25, 1952, the General Counsel sustained the Regional Director's refusal to issue a complaint. See Administrative Decisions of General Counsel, NLRB Case No. 766, August 17, 1953, CCH Labor Law Service, Par. 12,776. The company charge that the union was violating Section 8(b)(4)(D) filed April 8, 1952, was given full hearing; and the Board granted the union's motion to quash the notice of hearing. 101 N.L.R.B. 346.

On April 19, 1952, respondent filed its petition and complaint in this case, seeking an injunction against the picketing which petitioners conducted in connection with their strike. A permanent injunction was granted (R. 83) and affirmed by the Supreme Court of Missouri (R. 104, 119). Petitioners promptly raised and properly saved their objection that the injunction was beyond the state court's jurisdiction because Congress had pre-empted the field.

SUMMARY OF ARGUMENT

This case cannot be decided on the broad issue as to whether Congress has prevented Missouri from enforcing its anti-trust laws. The question is whether Congress has, in the Taft-Hartley Act, established the exclusive machinery for dealing with precisely the same assumed evils which Missouri is seeking to prevent here.

Analysis of the decision of the Supreme Court of Missouri shows that the reasons why it found that the petitioner's strike is illegal cover precisely the same area which Congress thoroughly canvassed in enacting the Taft-Hartley Act. Missouri's conclusion that the Machinists' course of conduct here should be enjoined rested, and rested ex-

clusively, on considerations relating to compulsory union membership, secondary boycotts, jurisdictional disputes, and industry-wide bargaining. The only possible genuine anti-trust consideration—the limitation of competition among sub-contractors to those employing members of the Machinists union—was not even mentioned.

Examination of the Taft-Hartley Act and its legislative history shows that each of these considerations was weighed carefully by Congress in enacting the Taft-Hartley Act. Some of the assumed evils which Missouri found here is prohibited; others, including the unmentioned consideration listed above, it affirmatively decided were not a proper basis for prohibition.

The congressional action and consideration precludes Missouri from redetermining the same issues. This conclusion is emphasized when the real dispute here is analyzed. The nub of the controversy here is the Machinists' desire to retain a clause limiting the contracting-out of work. Such clauses are common in American industry and perform a definite and important function in maintaining the wages, hours and working conditions specified in collective bargaining agreements. Union efforts to obtain and preserve such clauses, therefore, are within "the area of labor combat designed to be free" (346 U.S. at 500) unless they transgress the specific prohibitions of Section 8(b) of the federal Act.

All contracting-out clauses have some restraining effect on trade. Indeed, any strike for any purpose has such an effect. The question here is whether Missouri can decide whether the purpose sought to be achieved by the Machinists here through their contracting-out clause is a permissible one. Since the only objections to it which Missouri has are objections with which Congress has dealt, and dealt exclusively, we conclude that Missouri has no authority to draw the line. The decision below must, therefore, be reversed.

ARGUMENT

I.

THE NATURE OF THE QUESTION PRESENTED

We assume in this brief that the decisions of this Court establish the proposition that the Congressional regulation of labor—management relationships, which is contained in the Taft-Hartley Act, prevents a state from enforcing upon parties subject to the federal act the state's own labor relations policy. *Bus Employees* v. *Wisconsin E.R.B.*, 340 U.S. 383, *Automobile Workers* v. *O'Brien*, 339 U.S. 454, *Plankinton Packing Co.* v. *Wisconsin E.R.B.*, 338 U.S. 953, and *Garner* v. *Teamsters Union*, 346 U.S. 485. The federal statute does not, however, prevent the states from enforcing their traditional policies which do not involve a weighing of the social interests involved in labor relations matters even though those policies happen to be applied in a labor-management controversy.

Thus, the states may find liability for acts of violence and take appropriate police measures to prevent their recurrence, whether the violence occurs in connection with a strike, political rally or in Joe's Bar. In such cases, the state is enforcing its policy against disturbances of the peace, not its policy relating to strikes, its policy relating to political matters, or its policy relating to the dispensing of alcoholic beverages. On the other hand, regulation which has as its basis a decision by the state that a particular kind of union activity should be restrained, or permitted only under certain conditions, is a matter of labor policy and cannot be enforced if the parties are subject to the federal act. Congress has pre-empted this field and closed it to state regulation.

It is, perhaps, tempting to state the issue presented in this case as whether a state may restrain concerted activity by a union which seeks to achieve a result which

the state regards as violative of its anti-trust laws. But such a statement confuses, rather than clarifies, the issue. It might be argued, under the doctrine which we have summarily stated, that an agreement between an employer and a union to fix uniform prices for a product could be enjoined by a state under its anti-trust laws, because the agreement would constitute a violation of the anti-trust laws, whether or not one of the participants was a union and wholly apart from the labor management relationship. It seems quite clear, on the other hand, that a state could not make strikes for higher wages illegal on the ground that the necessary effect of such strikes must be to restrain trade in the products which would otherwise have been manufactured by the struck plant. Such a policy decision would conflict with the decision made in the Wagner and Taft-Hartley Acts.

The fact that the state law being enforced in a particular instance is entitled an anti-trust law, as in this case, or a labor relations statute, as in the *Garner* case, is not therefore decisive. The answer as to the state's power must be found in each case not in the title of the statute enforced but in the nature of the interest which the state seeks to protect.

The question in this case, then, cannot be stated simply in terms of the state's right to enforce its anti-trust laws. The question in this case must be whether the interest sought to be protected by Missouri in this application of its anti-trust law is an interest as to which Congress has already determined the nature and the extent of the protection which is to be provided. Stated alternatively, the question is whether Congress has already balanced the social interests involved in this case so as to prevent Missouri from independently re-deciding what Congress has already decided

In order to resolve this issue we must first turn to an analysis of the decision of the Supreme Court of Missouri

in an effort to determine the basis upon which that Court held that the action of the union here constituted a violation of Missouri's anti-trust law. We then must turn, briefly for the issue will undoubtedly be dealt with at length by the parties, to the question of whether Congress in the Taft-Hartley Act has dealt with the social interests which we find Missouri has sought to protect. If we find that the considerations involved in reaching Missouri's decision cover the same area as those necessarily involved in the judgment which Congress has made, we must conclude that the state cannot enforce its own resolution of the conflicting social interests involved. If we find, on the other hand, that the considerations involved in Missouri's decision are unrelated to those upon which Congress has already cited, the action of the Missouri Court can stand.

While never clearly stated, concepts somewhat similar to those outlined above were in fact discussed by the Supreme Court of Missouri. That court's way of stating the issue was in the form of two questions:

(1) Did the petitioner's conduct constitute a restraint of trade?

(2) Was there a "labor dispute" or an "unfair labor practice" involved?

The court answered the first question in the affirmative and the second in the negative, and these answers were the twin props of its decision. We turn now to an examination of those answers.

II.

THE BASIS OF THE MISSOURI COURT'S DECISION

A. Restraint of Trade

The court below did not spell out in coherent fashion the reasons which underlay its conclusion that the petitioners were conspiring to restrain trade. A careful reading of

the opinion of the court, however, discloses the elements upon which its conclusion was based. These elements were stated by the Court as follows:

> ". . . the Union sought, through the exercise of coercive pressure on plaintiff, to expand the scope of its representation to cover and include employees of the . . . independent construction contractors;" (R. 107).

> "The union announced its purpose and intention to obtain agreements similar to Section 2, Article VII, above, from all breweries in the St. Louis area so that under pressure from all brewers the construction contractors would be compelled to bargain with the Union as bargaining representative for their employees moving, erecting and installing machinery notwithstanding those employees were already represented by the Millwright's Union, or, the construction contractors would be compelled to replace their Millwright employees with Machinist employees;" (R. 108).

> ". . . under the terms . . . sought to be imposed by the Union persons employed by or seeking to work for the . . . construction contractors . . . would be compelled to forego representation by their present bargaining agent, the Millwrights' Union, with whom the said construction contractors now have valid collective bargaining agreements, and become affiliated with the Machinists' Union in order to retain their employment with such contractors or lost their opportunity for periodic employment at that work;" (R. 108-109).

> ". . . we rule from the above noted substantial evidence that: (a) the above conduct of defendants and the Union, as directed against the independent construction contractors and their Millwight [*sic*] employees, constituted and was a conspiracy in violation of the common and statutory law of this State; (b) that the sole and unlawful purpose of the concerted action of defendants and the Union in picketing plaintiff's plant was to effectuate the Union's un-

lawful conspiracy and to compel and coerce plaintiff to join said conspiracy to violate the law by acquiescing in the Union's unlawful demands; (c) that the picketing of plaintiff's plant was effectuated by an agreement and combination of the members of the Union [fol. 113] in restraint of trade . . . " (R. 111-112).

"In that picketing defendants took their final steps in their effort to coerce and compel plaintiff to become an active participant in defendant's conspiracy against the independent contractors and their Millwright Union employees. The instant picketing was for an illegal purpose." (R. 112).

Shortly stated, the Missouri court held that the strike against Anheuser-Busch, and its attendant picketing, was illegal because it was part of a conspiracy or combination to achieve an illegal purpose. The two elements are (1) the conspiracy or combination and (2) the illegal purpose. The conspiracy consisted of the plan to obtain contract clauses similar to the one involved here from all of the brewers in the St. Louis area. The illegal purpose consisted of the intended effect upon those with whom the brewers did business—the construction contractors and their employees. The evil in the intended effect was either that installation work now performed by millwrights would be reassigned to machinists or that those performing the work would be required to become affiliated with the Machinists' Union.[1]

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[1] The court below did find also that the picketing was and constituted a local transportation combination which denied and unlawfully prevented the transportation of products or commodities to or from plaintiff's plant, and the processing and manufacturing of products and commodities therein." (R. 112). It is clear on the record that this was considered incidental and minor by the parties and the court, and swallowed up in the larger constitutional issues. There was no more or less "transportation" combination or restraint, than any other kind of restraint of trade; and the consequences of the "transportation" restraint are the same as those discussed in the text of restraints generally. The injunction was not confined to

What are the social interests which the State of Missouri, through its statute as thus interpreted and applied, seeks to protect? What evil or combination of evils does the state seek to prevent? Reading backwards, from effect to cause, the different evils which the Supreme Court of Missouri found to be compounded in this case seem to be these:

(1) *Compulsory Union Membership:* millwrights should not be compelled by their employers either to join the Machinists Union or be deprived of work if they do not so join.

(2) *Jurisdictional Disputes:* an employer of millwrights should not be placed in the middle of a dispute between the two unions over work assignments which he cannot resolve and in which he is in nowise at fault.

(3) *Secondary Economic Pressure:* economic pressure should not be exerted against a brewery to compel an employer—a construction contractor—with whom the brewery does business to take action against his employees. The brewery is not a party to any dispute which may exist between a contractor and his employees and economic punishment should not be visited upon him because of such a dispute.

(4) *Industry-wide Bargaining:* unions should not be allowed to exert economic pressure against all the employers in an industry—the brewers—to obtain a uniform contract provision from each.

Which of these evils, if considered apart from the other, the State of Missouri would find sufficient to warrant condemnation under its anti-trust laws need not concern us here. Perhaps Missouri would enjoin direct picketing

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blocking ingress or similar matters, but had the broadest possible coverage under the circumstances (R. 98-100).

There was no finding that even the one or two incidents upon which this transportation holding rested were not "peaceful," so we shall throughout this brief refer to petitioners' conduct as peaceful, without qualification.

against the contractors to compel them to make their employees join a union. Perhaps such picketing would be enjoined only if the dispute was a jurisdictional one—i.e., involved the assignment of work between unions rather than organization of the unorganized. Perhaps the critical element is the secondary pressure found here—the strike against the brewers to coerce the contractors. Perhaps all of these elements together would not violate Missouri's law, if they were not part of an organized effort directed at all of the breweries in the area. On the other hand, perhaps the first two elements are unnecessary, and the exertion of concerted secondary pressure upon the brewers would constitute a sufficient evil to warrant condemnation whatever the nature of the dispute with the contractors. We do not know and we do not need to know. What we do need to know is that this catalogue includes every element of undesirability which is suggested by the opinion of the Supreme Court of Missouri.

There is another element which, although not even suggested by the Supreme Court of Missouri, might be set forth as a basis for anti-trust condemnation of a strike and its attendant picketing. This element would be the claimed economic interest of all of the people of Missouri in maintaining full and free competition between all employers engaged in the same business, irrespective of the union affiliation of their employees. The evil to be prevented can be stated as No. 5 in our catalogue:

(5) *Restriction of Competition:* any agreement which restricts the persons to whom an employer may sub-contract work is bad because it restricts competition among the potential sub-contractors.

B. No "Labor Dispute"

The court below was made aware that it might be invading a congressionally pre-empted field, and apparently

believed it had hurdled this constitutional barrier by reiterating that there was "no labor dispute" between these parties. (R. 105, 109, 112, 115, 117, 118, 119, 125). Had it recognized a "labor dispute," the court presumably would have held that it lacked jurisdiction in the face of the federal Act.

This is not the accurate way to state the issue. Although "labor dispute" is defined in Section 2(9) of the Act,[2] the concept is not made meaningful. The Act in Section 7 protects "concerted activities for the purpose of collective bargaining or other mutual aid or protection"[3] and in Section 8 it forbids certain particular kinds of concerted activity. These two concepts, rather than the definition of "labor dispute" define the area which Congress has pre-empted. But if "labor dispute" were the touchstone, the court below was obviously in error.

The bare assertion that "a jurisdictional quarrel between two rival labor unions is not a labor dispute within the Norris-LaGuardia Act, the Wagner Act or the Taft-Hartley Act" (R. 117) egregiously disregards *United States* v. *Hutcheson*, 312 U.S. 219, which decided the exact opposite under the Norris-LaGuardia Act, on the basis of precisely this controversy, involving these same unions, the same work and this same plant. This court held that the Norris-LaGuardia Act "explicitly formulated the 'public policy of the United States' in regard to industrial conflict, and by its light established that the allowable area of union activity was not to be restricted, as it had been in the *Duplex* case, to an immediate employer-employee relation." 312 U.S. at 231. Section 13(c) of that Act defines a "labor dispute" as including "any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the

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[2] 29 U.S.C. (Supp. V) § 152(9).

[3] 29 U.S.C. (Supp. V) § 157.

proximate relation of employer and employees."[4] Both the Wagner Act and the Taft-Hartley Act contain this same definition.[5]

III.

THE CONGRESSIONAL DECISION

We have listed above the five different evils which Missouri conceivably could have sought to prevent by enjoining the petitioner here.

That Congress considered all of these assumed evils and prescribed specific and defined measures to be employed to prevent such of them as it believed should be prevented cannot be doubted. Let us examine each item in our pentalogue.

(1) *Compulsory Union Membership.* This subject Congress covered specifically in Sections 8(a)(3) and 8(b)(2) of the Federal Act. Section 8(a)(3) provides that, except in certain defined cases, it shall be an unfair labor practice for an employer to encourage or discourage membership of his employees in any labor organization by discriminating against them in regard to hire or tenure of employment. Section 8(b)(2) provides that it shall be an unfair labor practice for a union to attempt to cause an employer to take such action. We assume that it is now settled that a state may not enforce a similar commandment. *Garner* v. *Teamsters*, 346 U.S. 485; *Building Trades Council* v. *Kinard Constr. Co.*, 346 U.S. 933.

(2) *Jurisdictional Disputes.* Here, too, Congress has specifically acted. Section 8(b)(4)(D) makes a jurisdictional strike an unfair labor practice. It forbids unions to engage in concerted action to require an employer to assign particular work to employees in one craft or labor

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[4] 29 U.S.C. (1946) § 113(c).

[5] 49 Stat. 449, 450, 29 U.S.C. (1946) § 152(9); 61 Stat. 136, 137, 29 U.S.C. (Supp. V) § 152(9).

organization rather than to employees in another craft or organization. Furthermore, Sections 10(k) and 10(l) and 303(4) disclose a comprehensive scheme of Federal enforcement including expedited unfair labor practice proceedings before the NLRB, an injunction which the Board (not the employer) is *required* to seek in the Federal Courts, special proceedings by the Board to resolve the jurisdictional dispute, and suits for damages (but not for an injunction) by the injured employer. Congress has thus provided a veritable battery of alternative and cumulative weapons to deal with jurisdictional disputes and it requires some temerity to urge that the states are nevertheless free to offer the one remedy which Congress refused.

(3) *Secondary Economic Pressure.* Here, too, Congress has specifically legislated. Sections 8(b)(4) (A) and (B) outlaw secondary economic pressures by making it an unfair labor practice for a union to engage in concerted action against one employer to compel him to cease doing business with another or to compel some other employer to recognize or bargain with a labor organization, unless that organization has been certified as the bargaining representative of the employees of the other employer. Again Congress has provided a battery of enforcement weapons, omitting only the special proceedings before the Board which are provided for in the case of jurisdictional disputes.

(4) *Industry or Area-Wide Bargaining.* This is an alleged evil which Congress has considered, at length and repeatedly. To this date, at least, the result of this consideration has been the rejection of proposals to restrict industry and area-wide bargaining and the inclusion of concerted action by a union on an industry or area-wide basis within the protective scope of Section 7 of the federal Act.

The subject need not be developed at length. In H.R.

3020, the version of the Taft-Hartley Act which the House originally passed, there were specific and detailed provisions absolutely prohibiting industry or area-wide bargaining.[6] The question of industry-wide bargaining was considered in the Senate but the majority report did not contain any recommendation for outlawing such bargaining. The supplemental views of Senators Taft, Ball, Donnell and Jenner did recommend an amendment which would "not outlaw industry-wide or area-wide bargaining as does the House Bill" but which would limit the authority of an international union with respect to its locals.[7] The final Senate bill did not contain the proposed amendment and the House provisions relating to industry-wide bargaining were omitted in conference.[8]

In the absence of Congressional disapproval of industry or area-wide bargaining, the National Labor Relations Board has consistently certified single unions which represent many, if not all, of the employers in a single industry or area. The activities of such unions in seeking

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[6] See House Report No. 245 on H.R. 3020, 80th Cong., 1st Sess., p. 9. Section 9(f)(1) of H.R. 3020, as it passed the House, provided that a union that represented employees of any one employer could not act as the representative of the employees of any competing employer, except in certain limited circumstances. Section 2(16) of the bill defined a "monopolistic strike" as a strike resulting from a concerted plan of action between employees of competing employers or between representatives of such employees, except where there was a common bargaining representative under the provisions of Section 9. Section 12(a)(3) of the bill declared that calling or engaging in a monopolistic strike was an unlawful concerted activity. These provisions were coupled with a repeal of the Norris-LaGuardia Act insofar as it was found applicable in anti-trust proceedings and an amendment of the Clayton Act to provide specifically that action of a labor organization in engaging in concerted activities declared to be unlawful under Section 12 of the labor act was not within the legitimate objects of labor.

[7] Senate Report No. 105 on S. 1126, 80th Cong., 1st Sess., p. 51.

[8] House Conf. Rep. No. 510, on H.R. 3020, 80th Cong., 1st Sess. pp. 46, 59.

uniform contract provisions have always been regarded as protected concerted activities.

(5) *Restraint of Competition.* This subject, too, was considered by Congress in connection with enactment of the Taft-Hartley Act, as well as at other times. The House bill, in addition to prohibiting industry wide bargaining, also provided in Section 301(b) that the Clayton Act should be amended so as to exclude from the legitimate objects of labor organization any combination to restrict competition or impose restrictions or conditions upon the purchase, sale or use of any product, material, machine or equipment. H.R. 3020, Sec. 301(b). A similar provision was not included in the bill reported by the majority of the Senate Committee, but, again, the supplemental views of Senators Taft, Ball, Donnell and Jenner contain a recommendation for an amendment which would have opened the courts to anti-trust charges against unions of the same kind. This amendment, which was specifically described by its sponsor as being intended to "correct" the decision of this Court in the *Hutcheson* case[9] was defeated.[10]

The bill went to conference and, as with the restraint of industry-wide bargaining, the anti-trust provision was eliminated. As stated in the report of the House conferees:

> "Since the matters dealt with in this section have to a large measure been effectuated through the use of boycotts, and since the conference agreement contains effective provisions directly dealing with boycotts themselves, this provision is omitted from the conference agreement." (House Conf. Rep. No. 510 on H.R. 3020, 80th Cong., 1st Sess. p. 65.)

This Congressional rejection of the "anti-trust" approach to labor problems in favor of provisions "directly dealing"

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[9] 93 Cong. Rec. 4837, 4846 (1947).
[10] 93 Cong. Rec. 4847 (1947).

with specific abuses is especially significant. Historically, judicial action in the labor field typically masqueraded as a regulation of restraints of trade. See A. T. Mason, *Organized Labor and the Law* (1925) 22-50.[10a] The Wagner Act was a direct reaction to and rejection of the "anti-trust" approach to labor problems. "The most effective legal weapon against the struggling labor union was the doctrine that concerted activities were conspiracies, and for that reason illegal. Section 7 . . . took this conspiracy weapon away from the employer in employment relations which affect interstate commerce. No longer can any state, as to relations within reach of the Act, treat otherwise lawful activities to aid unionization as an illegal conspiracy merely because they are undertaken by many persons acting in concert." *Auto Workers* v. *Wis. Board*, 336 U.S. 245, 257-258; cf. *United States* v. *Hutcheson*, 312 U.S. 219.

When the pendulum began to swing the other way in 1947 and Congress sought to reverse the direction in which it had moved in the Wagner Act, it was natural that those who most strenuously pushed this reaction should propose to return again to the anti-trust concepts of conspiracy and combination. They did so propose. But the proposals were rejected. And they were rejected with full recognition of the historical development and interrelationship of anti-trust and labor relations concepts. Section 301 of the House bill, which would have reinjected anti-trust standards into the federal regulation of labor matters was opposed by the minority of the House Labor Committee solely on the basis that anti-trust laws are inappropriate for such purpose.

"The anti-trust laws are useful in promoting trade

[10a] ". . . it is common ground among students of the Sherman Law . . . that it has been one of the strongest influences counteracting trade unionism in the United States." Felix Frankfurter in Berman, *Labor and the Sherman Act* (1930 xiv.)

> and protecting consumers against the abuses of monopolistic business combinations. They are, however, ill-adapted as a means for maintaining stable labor-management relations or for policing union behavior." [11]

In the Senate the Ball amendment occasioned much oratory about the anti-trust decisions of this Court of an earlier era.[12]

The final action of the Senate in rejecting the Ball amendment and of Congress as a whole in rejecting Section 301 of the House bill shows the congressional recognition of the fact that all activities of unions have some effect on the market place and a congressional decision that the appropriate method of dealing with assumed abuses was to enact "effective provisions directly dealing" with the abuses themselves, not to return to the concepts of what is, or is not, a reasonable or justifiable interference with trade.

IV

MISSOURI HAS ACTED HERE WITHIN THE AREA OF CONGRESSIONAL REGULATION

The examination which we have made of the elements involved in Missouri's "anti-trust" decision here and of the matters considered by Congress in enacting the federal labor relations law make clear the conclusion that the state here has sought to deal with precisely the same problems which Congress dealt with in the federal Act. The social objectives involved in guaranteeing to employees freedom to join the union of their choice, in protecting employers from jurisdictional strikes and from pressures unrelated to their relationships with their own employees, in restricting the concerted activities of a union to one of many

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[11] House Report No. 245 on H.R. 3020, 80th Cong., 1st Sess., p. 108.

[12] See, e.g., 93 Cong. Rec. 4197-4198, 4842-4843, 4872.

competing employers, in freeing trade and commerce from the interference resulting from union activity, were all considered and weighed by Congress in making the 1947 amendments to the Act.

The action of Congress in 1947 in specifying certain union unfair labor practices was not, of course, just a statement that certain concerted activities were federally forbidden. It was, in effect, a modification of the pre-existing rule, established by Congress in Section 7 of the Act in 1935, that employees should be free "to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Through the legislative resources available to it, Congress weighed these interdependent and interacting objectives and interests. It considered the impact of specific varieties of conduct upon the market place and it decided which should be prohibited and which should not. A state court, working within the confines of single cases in the judicial process, should not be permitted to plow the same ground which Congress has covered to its satisfaction. As this Court said in the *Garner* case:

> "The detailed prescription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint. For the policy of the national Labor Management Relations Act is not to condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits." *Garner* v. *Teamsters Union*, 346 U.S. 485, 499-500.

The conclusion of the *Garner* case that the collective action there involved, if not forbidden by the federal Act,

was within "the area of labor combat designed to be free" rests on one additional and unspoken premise—that the action sought to be restrained was of the kind included within the scope of the activities with which the federal Act is concerned. This was, perhaps, easy to see where the organization of employees was concerned. We think that it is equally true here.

We have already come to this conclusion by considering only the negative aspects of the union conduct which is here involved—the evils which Missouri saw in the petitioners' picketing. We found that they were the same as the evils which Congress considered when it established the federal labor policy in the Taft-Hartley Act. We have not examined the positive aspect—the legitimate interest of the employees and their union in achieving the kind of objective here involved. The Missouri court apparently saw no such positive social interest. This does not mean that it does not exist. It should, perhaps, be briefly sketched.

The nub of the controversy here was the Machinists' request to retain in their 1952 collective bargaining contract with the brewery a provision, first inserted in 1951, which limited the right of the brewery to contract out work of the kind "performed within the Employer's plant" by the employees represented by the Machinists' Union. The provision specified that if it became necessary to have such work "contracted out" the contract should be given to contractors who had contracts with the Machinists' Union covering such work. As found by the National Labor Relations Board when this same controversy was before it, the Machinists offered to limit this provision to the subcontracting of repair or replacement work, leaving the employer free to select any contractor for the installation of new machinery, even though the 1951 provision had contained no such limitation. The refusal of the employer to accept this proposal led to a strike by the Machinists and the picketing which Missouri enjoined.

The Missouri court assumed that the Machinists' only purpose was to displace the Millwrights' Union as the collective bargaining representative of certain employees of the construction contractors. The court considered such a purpose to be unlawful and alien to what it regarded as a proper "labor dispute". Perhaps the National Labor Relations Board would have agreed with this finding as to purpose if a charge based upon Sections 8(b)(2) or 8(b)(4)(A) or (B) had been heard and decided by it. Perhaps the Board would therefore have ordered the Machinists' Union to cease and desist. We do not think so. We suggest there are very good reasons to believe that the Board would not have so found and that, if the question had been presented to it, the Board would have found that the strike here was a concerted activity within the protection of Section 7 of the Act.

This controversy has been before the Board already on a charge that it involved a jurisdictional strike in violation of Section 8(b)(4)(D) of the federal Act. After full hearing and careful analysis, the board decided there was no violation of Section 8(b)(4)(D) for reasons which it summarized as follows:

> "The disagreement in this case relates only to the incorporation of the 1951 contractual provision, or a modified counterpart of it, in the 1952 contract then under negotiation—a provision intended to limit the Employer's *selection of contractors*. Such disagreement, viewed in the context of the contract negotiations, the desire on the part of the IAM to continue in effect the existing limitation on subcontracting, and all the surrounding factual circumstances, cannot, in our opinion, be equated with a *present* demand for the assignment of work such as is contemplated by Section 8(b)(4)(D) of the amended Act. Accordingly, we conclude that no dispute within the meaning of the Act was created either when the strike action was taken or when the incorporation of the provision in question was demanded.

> "As we have found on the record before us no 'dispute' within the meaning of Sections 8(b)(4)(D) and 10(k), we shall quash the notice of hearing issued in this proceeding." *International Association of Machinists*, 101 N.L.R.B. 346, 351-352 (1952) (italics in original).

One of the "surrounding factual circumstances" which the Board recited in its opinion was the fact that in 1951, when the contractual provision was first agreed to, as well as in 1952, when the employer sought to eliminate it, several contractors were in fact engaged in projects at the brewery. One of those contractors performed millwright work and his employees were covered by a collective bargaining agreement with the IAM. There was, apparently, no proof that it was or would become "necessary" to contract other work of this nature and the Board found, therefore, that there was no present demand for the assignment of work either with respect to the brewer's employees or with respect to any contractor's employees.

If we assume, then, that pressure was not being placed upon the brewery to compel an employer with which the brewery was doing business to take action against its employees, and if we assume no present dispute over work assignments, we are left substantially with the issue as to whether, under the federal Act, a Union has a right to bargain "for contractual limitations on an employer's power to subcontract work." 101 NLRB at 350.

The answer, we think, is obvious. Such clauses have appeared in many labor agreements, in this industry, and in others, and they perform a definite and desirable function, directly related to a union's interest in maintaining proper "wages, hours of employment, or other conditions of employment" [13] for the employees which it represents.

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[13] 29 U.S.C. (Supp V) § 159(a).

"Management considers contracting work out to be an exercise of its right to determine the means and method of production.

An employer who wishes to evade the basic provisions of his collective bargaining agreement need only contract work out of the bargaining unit. If he sends the work to be done by non-union help, or by men working under inferior union agreements, the Gresham's Law of labor relations will assert itself. The bad wages and conditions will drive out the good. The standards of the union agreement will be defeated by the indirect attacks of other employers if the primary employer is free to contract the work away from the unit.

For this reason employers and unions in many industries have inserted contracting-out clauses into their collective bargaining agreements. In the men's clothing industry in New York, for example, a standard contractual provision specified that "The Manufacturer who employs contractors shall employ only such contractors as employ only members of the union in good standing, and shall not cause or permit any work to be performed for him, directly or indirectly, by any person, partnership, corporation or contractor employing workers who are not members of the union in good standing." An arbitrator awarded damages and injunctive relief for a violation of this provision. *Irving Horowitz*, 8 Lab. Arb. 1001, 1004 (1947). The award was confirmed in the New York Supreme Court which held that "The collective bargaining agreement of the kind here involved has repeatedly been approved as not in violation of public policy or the Donnelly Act [New York anti-trust law]". *Potofsky* v.

Workers, on the other hand, sometimes regard subcontracting as a threat to their job opportunities, particularly if the work has customarily been done in the plant. They are also concerned over their working standards if the employer can send out work to plants with less favorable wage and working conditions. Unions, therefore, often seek to regulate or restrict the practice of subcontracting." U. S. Bureau of Labor Statistics Bulletin No. 908-12, *Collective Bargaining Provisions: Union and Management Functions, Rights and Responsibilities*, 20 (1949).

Horowitz, 8 Lab. Arb. 1063 (N.Y. Sup. Ct., 1947), *aff'd.* 90 N.Y. Supp. 2d 899 (App. Div. 1st Dept., 1949).

In the utility industry, an arbitration award required that the following clause be inserted in the collective labor agreement: "When building or construction work is to be contracted out by the company all other matters being relatively equal, the company will give preference to contractors having union agreements with the International Brotherhood of Electrical Workers, or affiliated unions, provided that nothing herein shall require the company to violate Federal, State or Municipal laws or regulations." The Board granted the award in the interest of healthful, stable and peaceful labor relations and because "such a clause is common practice in contracts with this union (16 of 18 submitted) . . ." *Duquesne Light Co. et al.*, 11 Lab. Arb. 1023, 1026—7, 1032 (1948).

One agreement of the IBEW, in the telephone industry, recognized the right of management to contract work out, but provided that "Such contractors, however, shall have agreements with International Brotherhood of Electrical Workers . . ." *Michigan Associated Telephone Co.*, 12 Lab. Arb. 190, 194 (1949).

Other examples include provisions in the agreement between the Merchants' Ladies' Garment Association, Inc., and the International Ladies Garment Workers Union, AFL [14] in the master agreement of Los Angeles furniture manufacturers [15] and in the oil industry.[16] A BLS study includes a number of others, without identifying the industry.[17]

The examples cited are of clauses of the particular kind here involved, requiring an employer to contract only with

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[14] Bureau of National Affairs, *Collective Bargaining Negotiation and Contracts*, 65:183.

[15] Super-Built Furniture Mfg. Co. 20 War Lab. Rep. 525, 526 (1944).

[16] Ashland Oil and Refining Co., 8 Lab. Arb. 465, 467 (1947).

[17] U. S. Bureau of Labor Statistics, *op. cit. supra* note 13, at 23-26.

firms employing members of the same union or unionized employees. There are of course many other types of contracting and sub-contracting provisions.

The employer may be forbidden to subcontract if the work can possibly be done by his own employees.[18] This may take the form of outlawing subcontracting if layoffs will be caused,[19] or the pay, working conditions and job security of the employees affected.[20] Employers have agreed not to subcontract unless the employees in the unit are "fully employed," [21] and have pledged to give preference to employees before subcontracting.[22] There may be restrictions on the nature of the work which may be contracted out,[23] or promises to let out only "surplus" work.[24] Prior consultation may be required.[25]

In some industries there are provisions that forbid subcontracting altogether. In the railroad industry, "it is well settled . . . that as an abstract principle a carrier may not let out to others the performance of work of a type embraced in one of its collective agreements with its em-

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[18] Yale & Towne Mfg. Co., 19 Lab. Arb. 882 (1953); Librascope, Inc., 19 Lab. Arb. 219 (1952); Pfeiffer Brewing Co., 16 Lab. Arb. 89 (1951); Munde Cork Corp., 16 Lab. Arb. 887 (1951). For other illustrations of the various subcontracting clauses, see U. S. Bureau of Labor Statistics, *op. cit. supra* note 13, at 20-30; Bureau of National Affairs, *op. cit. supra* note 14, at 65:181—65:186.

[19] Tin Processing Corp., 20 Lab. Arb. 227 (1953).

[20] Western Electric Co., Inc. 24 War Lab. Rep. 525, 535 (1945).

[21] Kaplan Furniture Co., 14 Lab. Arb. 10 (1950); cf. L. A. Young Spring & Wire Corp., 23 Lab. Arb. 400 (1954); East Texas Salt Water Disposal Co., 22 Lab. Arb. 484 (1953). In Fulton County Glove Industry, 4 War Lab. Rep. 307 (1942), the War Labor Board recommended a clause which required full operation before there could be any subcontracting.

[22] Allegheny Ludlam Steel Corp., 23 Lab. Arb. 171 (1954); Baldwin Locomotive Works, 11 Lab. Arb. 291 (1948).

[23] Sinclair Prairie Oil Co., 6 Lab. Arb. 855 (1947).

[24] Mullite Refractories, Inc., 13 Lab. Arb. 690 (1949).

[25] Corn Products Refining Co., 22 Lab. Arb. 68 (1953).

ployees." [26] And in the fur manufacturing industry in New York, a collective bargaining provision forbidding subcontracting was upheld by the state court, against the attack that it violated both the national and state anti-trust laws. The court declared that:

> "The 'no-contracting' provisions, now assailed as contrary to public policy and as illegal and unenforceable, have been incorporated in the collective labor agreements in this industry since 1928 and have been enforced. They pertain to matters in which the union and its membership have a direct economic interest and are essentially for the benefit of the union and its members and for the maintenance and preservation of concededly desirable standards and working conditions in the industry." *Matter of Mencher (Geller & Sons)*, 276 App. Div. 556, 562, 96 N.Y. Supp. 2d 13 (1950).[27]

The interest sought to be protected and the threat represented by indiscriminate subcontracting are so obvious that many arbitrators have ruled that an employer is not free to subcontract work away from the bargaining unit, even in the absence of a specific provision forbidding it.[28] They reason that the general spirit of collective bargaining, and the purpose of such clauses as union recognition and seniority, will be violated by affording the employer complete freedom to subcontract. And those arbitrators who hold the other way specify that they do so because of the

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[26] National Railroad Adjustment Board, Third Division, Award No. 757, p. 320, at p. 323 (1938).

[27] See Associated Fur Coat and Trimming Mfrs., Inc., 19 War Lab. Rep. 835, 836, 847 (1944).

[28] Lorraine Mfg. Co., 22 Lab. Arb. 390 (1954); Journal Publishing Co., 22 Lab. Arb. 108 (1954); A. D. Juilliard & Co., 21 Lab. Arb. 713 (1953); Magnolia Petroleum Co., 21 Lab. Arb. 267 (1953); National Tube Co., 17 Lab. Arb. 790 (1951); Stockholders Publishing Co., Inc., 16 Lab. Arb. 644 (151); Parke, Davis & Co., 15 Lab. Arb. 111 (1950); Celanese Corp. of America, 14 Lab. Arb. 31 (1950); American Cyanamide Co., 13 Lab. Arb. 652 (1949).

absence of a contractual provision that abridged the management right.[29]

We cannot, of course, list all the cases in which union agreements require that the employees of subcontractors be under agreement with the same union or observe union standards, or which otherwise regulate subcontracting. The samples we have given, however, are sufficient to demonstrate that the union activity here involved was of a kind and character clearly within the scope of the federal regulation. It may possibly fall within the prohibitions of one of the various subdivisions of Section 8(b). Consideration of all the relevant facts may, however, lead to the conclusion that it is not so prohibited. If so, it clearly falls within "the area of labor combat designed to be free." 346 U.S. at 500.

V

THE DECISION BELOW MUST BE REVERSED

To sum up the matter, we have here union action in support of a demand for a contract clause limiting the contracting-out of work. All such clauses, no matter what their precise content, necessarily have a limiting effect on the trade of contractors. They may exclude contractors from potential business entirely, limit the occasions on which they can compete, or limit the contractors who can compete. All of them can be said, in a sense, to be "restraints of trade".

Such clauses, on the other hand, can and do serve as appropriate and necessary adjuncts to labor's legitimate interest in achieving and maintaining certain standards of wages, hours and working conditions. We think it is clear

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[29] See, e.g., Carborundum Co., 20 Lab. Arb. 60 (1952); Appalachian Electric Cooperative, 19 Lab. Arb. 815 (1953); National Sugar Refining Co., 13 Lab. Arb. 991 (1949); International Harvester Co., 12 Lab. Arb. 707 (1949); U. S. Tool & Mfg. Co., 24 War Lab. Rep. 470 (1945); Graef & Schmidt Co., 24 War Lab. Rep. 297 (1945); Elkouri, *How Arbitration Works*, 237-239 (1952).

that Missouri could not seek to prevent any union from ever seeking a contracting-out clause. To do so would clearly interfere with the activities which Congress has protected.

The question then is whether Missouri can draw a line, whether it can outlaw those contracting-out clauses which it decides are contrary to its public policy. Our argument here is that whether it can do so or not depends upon the policy which Missouri is seeking to enforce. We have shown, we think, that the evils which Missouri saw here are precisely the evils with which Congress dealt in 1947. Congress, in short, has already drawn the line which Missouri seeks here to draw. It has drawn that line in terms of the specific unfair labor practices set forth in Section 8(b).

It is not necessary for this Court to decide on which side of the line the action of the Machinists here falls. That is a function which Congress has assigned to the National Labor Relations Board in the first instance and to the federal courts only as they are called upon to review the decisions of the Board. Missouri has no authority to make the initial decision, and this Court's function is to review only Missouri's right to decide. If Missouri had no right to make the decision its action here cannot stand.

CONCLUSION

For the reasons above stated the judgment of the Supreme Court of Missouri should be reversed and the complaint herein dismissed.

Respectfully submitted,

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No. 97

In the Supreme Court of the United States

OCTOBER TERM, 1954

LLOYD WEBER, RUSSELL L. DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER, AND THOMAS MULVANEY, INDIVIDUALLY AND AS REPRESENTATIVES OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, PETITIONERS

v.

ANHEUSER-BUSCH, INC., A CORPORATION

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 97

LLOYD WEBER, RUSSELL L. DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER, AND THOMAS MULVANEY, INDIVIDUALLY AND AS REPRESENTATIVES OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, PETITIONERS

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of Missouri (R. 104-126) is reported at 265 S. W. 2d 325. The decision and order of the National Labor

Relations Board relating to the instant controversy is reported at 101 NLRB 346.

JURISDICTION

The petition for a writ of certiorari was granted on October 14, 1954 (R. 128). The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3).

QUESTION PRESENTED

Whether the National Labor Relations Act precludes a state court, acting under authority of a state restraint of trade law, from enjoining peaceful picketing, the sole object of which is the inclusion in a collective bargaining agreement of a clause limiting the employer's selection of outside contractors to those having collective bargaining agreements with the picketing union.

STATUTES INVOLVED

The pertinent provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., 141, *et seq.*), and of the Revised Statutes of Missouri are set forth in the Appendix, *infra*, pp. 41-50.

STATEMENT

Respondent Anheuser-Busch, Inc., a Missouri corporation engaged in the manufacture and sale of beer and other products, is engaged in interstate commerce (R. 101; 21-22).[1] In its St. Louis plant

[1] The record before the Board on one facet of the instant controversy (*infra*, pp. 4-5) established that respondent's inflow and outflow of goods across state lines totalled respectively more than $1,000,000 in volume (101 NLRB 346, 347). Hence, the Board would assert jurisdiction over respondent

respondent employs approximately 6000 persons, about 220 of whom are machinists (R. 104; 22, 38). In 1948, International Association of Machinists, District No. 9, petitioner herein, which for years had represented these machinists for purposes of collective bargaining, was certified by the Board as their exclusive bargaining representative (R. 24-25). Following this certification, petitioner and respondent entered into a series of collective bargaining contracts, the last of which terminated on December 31, 1951 (R. 107; 4, 13, 25).

Late in 1951 and early in 1952 the parties engaged in negotiations for a new contract (R. 5, 13). The 1951 contract had contained a clause (Article VII, Section 1) limiting machinist work in the plant to members of the unit represented by petitioner, and a further clause (Article VII, Section 2), the effect of which was to require respondent, which regularly contracted out work of installing, erecting, and moving new machinery, to confine its selection of contractors to those having collective bargaining agreements limiting such work to employees represented by International Association of Machinists (R. 4-5, 13). The negotiations for a new contract foundered on petitioners' insistence and respondent's refusal to continue to incorporate the latter provision in a new agreement (R. 107-

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even under the self-imposed limitations now governing its exercise of jurisdiction in cases coming before it. See *Jonesboro Grain Drying Cooperative*, 110 NLRB No. 67, 35 LRRM 1038, 1039, decided October 26, 1954.

108; 33-34).[2] An impasse having been reached, petitioners went on strike on April 7, 1952, and peacefully picketed respondent's premises (R. 109-110; 16, 48-55).

On the following day, respondent filed a charge with the National Labor Relations Board alleging that petitioners had engaged in strike activity, in violation of Section 8(b)(4)(D) of the National Labor Relations Act, as amended, for the purpose of forcing and requiring respondent and those contracting with it to assign certain work to employees who were members of petitioner union rather than to employees who were members of other labor organizations (R. 125, 115; 16, 25).[3] Pursuant to this charge a hearing was held under Section 10(k) of the Act.[4] The Board ruled that since petitioner

[2] The record establishes that the present controversy is merely another manifestation of the long-standing dispute between the Machinists Union and the Millwrights who are affiliated with the Carpenter's Union. See *United States* v. *Hutcheson*, 312 U. S. 219. Respondent, which had bargaining relationships with both unions, was of course subjected to rival pressures (R. 106-107; 31-32).

[3] An earlier charge had been filed by petitioner alleging a wrongful refusal to bargain by respondent. The General Counsel sustained the Regional Director's refusal to issue a complaint on this charge on the ground that there was no showing that respondent had failed to bargain (R. 125; 25, 70).

[4] Section 10(k) provides:

> Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon

was not presently demanding the assignment of any particular work either from respondent or from its subcontractors, but was merely seeking to limit the company's selection of contractors, the controversy did not constitute the kind of "dispute" covered by Sections 8(b)(4)(D) and 10(k) of the Act. Accordingly, since it had before it only the question of an alleged "dispute" within Sections 8(b)(4)(D) and 10(k), the Board quashed the proceeding. (R. 115, 125; 101 NLRB 346, 352.)

Meanwhile, on April 19, 1952, respondent instituted the instant proceedings for injunctive relief in the Circuit Court of the City of St. Louis, Missouri (R. 2). In these proceedings respondent alleged not only that petitioners had violated Section 8(b)(4)(D) of the National Labor Relations Act, as amended, as it had alleged before the Board, but also that the identical conduct constituted a violation of Section 8(b)(4)(A) and (B) of that Act.[3] The court issued a temporary restraining order forthwith. Thereafter, on April 30, 1952,

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methods for the voluntary adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

Under the statutory procedure, devised especially by Congress to deal with matters arising out of charges of Section 8(b)(4)(D) violations, the Board had no authority to, nor did it, pass on the question whether other subsections of Section 8 might have been violated.

[3] No charge having been filed with the Board in this latter regard, the Board had no occasion to pass on this issue. (See preceding note.) The text of Section 8(b)(4)(A) and (B) of the Act is set forth in the Appendix, *infra*, pp. 41-42.

respondent amended its pleadings in the state court to include for the first time an allegation that petitioners' conduct also constituted a conspiracy in restraint of trade in violation of Missouri law (R.S. Mo. 1949, Sec. 416.010). After hearing, the court, on October 3, 1952, granted a permanent injunction enjoining petitioners from any and all picketing of respondent's premises (R. 2, par. 15a, 272-283). Petitioners appealed to the Supreme Court of Missouri, which on February 8, 1954, affirmed the finding and decree of the trial court (R. 103, 265 S. W. 2d 325, 334).

The Missouri Supreme Court found that the purpose of the picketing was to compel "persons employed by or seeking to work for * * * construction contractors in moving, erecting, or installing machinery in St. Louis area breweries * * * to forego representation by their present bargaining agent, the Millwrights' Union, with whom the said construction contractors now have valid collective bargaining agreements, and become affiliated with the Machinists' Union in order to retain their employment * * *" (R. 108-109). The court further concluded (R. 111-112) that petitioners' conduct, directed against the contractors and their Millwright employees, was a conspiracy in violation of state statutory and common law; that the sole purpose of the picketing was to compel respondent to join in the unlawful conspiracy; and that the picketing effectuated by a combination in restraint of trade unlawfully prevented respondent from transporting, processing, and manufacturing its products.

Relying on *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, and distinguishing *Garner* v. *Teamsters Union*, 346 U. S. 485, the Missouri Supreme Court rejected the contention that the National Labor Relations Act had preempted the field (R. 114-119) and that therefore the state court was without jurisdiction in the premises. The court held *Garner* inapplicable because the instant case, unlike *Garner*, did not, in the court's view, involve a labor dispute or an unfair labor practice, but constituted rather "coercive tactics restraining freedom of trade, an internal affair over which this State has 'traditionally exercised control' " (R. 116-118).

SUMMARY OF ARGUMENT

A. Congress has paramount power under the commerce clause to exclude state regulation of labor relations matters affecting interstate commerce. Because of the complex and far-flung character of labor controversies, Congress concluded that "centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Garner* v. *Teamsters Union*, 346 U. S. 485, 490. Accordingly, where Congress has taken in hand a particular type of controversy or relationship in the field of labor relations affecting interstate commerce, a state may not adjudicate the same controversy or regulate the same relationship. And this is true whether or not the National Labor Relations Board, the agency designated by

Congress to administer its "specially designed procedures," has granted any relief with respect to the particular controversy or relationship. By the same token, where Congress has deliberately chosen to leave controversies or relationships within the ambit of its powers wholly or partially free of restraint or regulation, a state is, *pro tanto*, precluded from acting in the area.

Congress, however, is not required to exert the full scope of its power, and it has not done so. Thus, states can act, *inter alia*, in areas where Congress has left labor relations matters entirely ungoverned, or in situations where it is clear that the state action is not, primarily, the regulation of labor relations matters which fall within the Congressional purview, but merely the protection of a legitimate state interest which does not impinge on the area which the federal Act occupies. See *United Construction Workers* v. *Laburnum Corp.*, 347 U. S. 656.

B. The text of the Act and its legislative history demonstrate that Congress took in hand the type of controversy here involved and determined both the nature of the activity it wished to interdict and the breadth of the remedy it wished to afford. The advocates in Congress of the administrative approach narrowly defined the kind of jurisdictional dispute and secondary boycott which they deemed to constitute unfair labor practices and provided for injunctive relief in the federal courts, but only at the instance of the National

Labor Relations Board. Their opponents, however, advanced numerous proposals both in the House and the Senate which would have outlawed all jurisdictional disputes and secondary boycotts, whatever their genesis or scope, and, in addition, would have stripped such activities of the immunity to anti-trust prosecution afforded by the Norris-LaGuardia and Clayton Acts. Moreover, these proposals would also have permitted private parties to institute injunctive proceedings in the courts. The administrative approach prevailed in the law as finally enacted. The Board alone was permitted to institute injunctive proceedings, and the sole concession made in this regard was that private parties were allowed to bring damage actions in the courts for the violations defined in the Act.

In view of the comprehensive consideration thus given jurisdictional disputes and the kind of remedy which should be afforded, it is clear under related decisions of this Court that Congress has occupied the field, and that the states may not act in this area, whether their action would be consistent or inconsistent with the paramount federal pattern. By the same token, it is immaterial whether the Board, in a given situation, would or would not find an unfair labor practice to have occurred within the meaning of the relevant statutory provisions contained in the federal Act. The decisive factor is that the conduct under consideration falls within "the area of labor combat" which the Act regulates to the exclusion of the states *(Garner, supra)*.

C. The court below, relying on *Giboney* v. *Empire Storage & Ice Company*, 336 U. S. 490, holds that since the purpose and effect of its action is not to regulate labor relations, but merely to regulate trade practices, its power in this field is paramount. *Giboney* confirms the constitutional authority of a state to regulate trade within its borders and establishes the right of a state to apply such regulation even to conventional union activity. But that decision, concerned apparently with a purely local enterprise, does not pass on the question of federal supersedure over labor relations matters where interstate commerce is affected.

The fact that the state's action is characterized as dealing with a "restraint of trade" cannot in and of itself validate its effort to regulate union activities which are governed exclusively by federal legislation. Every strike, however legitimate its means and objective, gives rise to some restraint of trade, and on this theory states could, by merely affixing an anti-trust label to their action, effectively exercise concurrent jurisdiction over all such controversies no matter how clearly such matters fell within the federal jurisdiction. By a parity of reasoning, states could regulate labor relations in public utilities since the interest of a state in maintaining essential services is at least as great as its interest in regulating trade practices.

Bus Employees v. *Wisconsin Board*, 340 U. S. 383, however, is to the contrary, and demonstrates that even in such a situation the federal commerce

power prevails so long as Congress has chosen to exercise that power and to leave no room for state action.

ARGUMENT

The National Labor Relations Act, as Amended, Precludes a State from Enjoining Peaceful Picketing in the Type of Jurisdictional Dispute Here Involved.

It is undisputed that respondent is engaged in interstate commerce. Here, as in *Garner* v. *Teamsters Union*, 346 U. S. 485, 501, respondent, on the basis of the allegations in the complaint in the state court "could have presented [its] grievance to the National Labor Relations Board," and petitioner was "subject to being summoned before that body to justify [its] conduct." However here, as was not the case in *Garner*, respondent in addition to filing its state suit, did in fact present its grievance to the Board, albeit on sharply limited grounds,[6] and the Board after consideration of the merits dismissed the proceeding on the ground that petitioner's inconsistency did not violate Section 8(b)(4)(D) of the Act, the only infraction charged. Accordingly,

[6] As already noted, fns. 4 and 5, pp. 4-5, *supra*, respondent did not allege before the Board, as it did before the state court, that petitioner's conduct violated Section 8(b)(4)(A) and (B) of the Act, and the Board did not pass on that issue. To the extent that petitioner's conduct may be taken to fall within the confines of the cited provisions, this case is indistinguishable from *Garner* in that respondent was prosecuting a grievance before a state court when it "could have presented [but did not present] this grievance to the National Labor Relations Board." Moreover, when the state trial court issued its temporary restraining order and permanent injunction, the Board had not yet acted (*supra*, pp. 5-6); thus, at that stage the instant proceedings were in a posture similar to that in *Garner*.

the conflict between state and federal authority which was only potential in *Garner* has become an actuality here. Here too, unlike *Garner,* respondent's complaint in the state court contained, in addition to the allegation that petitioner's activities constituted an unfair labor practice within the prohibition of the federal Act, the further allegation, sustained by the court below, that these activities also were violative of Missouri's restraint of trade law. The issue here therefore is whether, in view of these differences between *Garner* and the instant case, the court below correctly concluded that the *Garner* holding permitted the state court to assert concurrent jurisdiction over the instant controversy. We believe, on the basis of Garner and other controlling decisions of this Court, that the decision of the Missouri court is incompatible with the federal Act.[7]

A. Congress, exercising its paramount federal power over labor relations matters affecting interstate commerce, has outlined in broad terms the respective areas of federal and state jurisdiction in this field

As this Court has repeatedly held, the National Labor Relations Act, both before and after the 1947 amendments, is "federal legislation, ad-

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[7] For an informative discussion of the instant case and the general problem of federal-state relations in this area, see Archibald Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1329-1332.

ministered by a national agency, intended to solve a national problem on a national scale." *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 123. Congress from the outset made it clear that the Act "is paramount over other laws that might touch upon similar subject matters" (*Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 267, quoting from Sen. Rep. No. 573, 74th Cong., 1st Sess., 15), and "that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Garner* v. *Teamsters Union*, 346 U. S. 485, 490.

The decisions of this Court show that Congress not only was aware, therefore, but intended that state action would be foreclosed where the federal statute applied. *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, 391; *Garner* v. *Teamsters Union*, 346 U. S. 485, 491, 500-501; *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 236; *California* v. *Zook*, 336 U. S. 725, 732. Where Congress has taken in hand a particular type of controversy or relationship, a state may not—whether by court action, legislative action, or administrative action—adjudicate the same controversy or regulate the same relationship. *Garner, supra; Capital Service, Inc.* v. *National Labor Relations Board*, 347 U. S. 501; *Hill* v. *Florida*, 325 U. S. 538; *Auto*

Workers v. *O'Brien*, 339 U. S. 454; *Bethlehem Steel Co.* v. *New York Board*, 330 U. S. 767; *Plankinton Packing Co.* v. *Wisconsin Board*, 338 U. S. 953. And it is immaterial in this regard that the Board has not actually granted any relief with respect to the particular controversy or relationship so long as it has the exclusive authority to act. *Garner, supra; LaCrosse Telephone Corp.* v. *Wisconsin Board*, 336 U. S. 18. Finally, where Congress, in formulating the Act, has considered the regulation of controversies or relationships within the ambit of the federal power and has determined to leave a particular subject matter wholly or partially free of regulation or restraint, a state is, *pro tanto*, precluded from acting in the area. "For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare [the activity in question] free for purposes or by methods which the federal Act prohibits." *Garner*, 346 U. S. at 500; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383 (strikes in public utilities); *Auto Workers* v. *O'Brien*, 339 U. S. 454 (strike vote authorization).

On the other hand, as this Court has pointed out, the text and history of the federal Act plainly contemplate certain areas subject to federal control in which the states are nonetheless free to act. Clearly within this category is the regulation of controversies or relationships which Congress has neither considered nor sought to regulate, but has left ungoverned. Thus, this Court held in *Auto Workers*

v. *Wisconsin Board*, 336 U. S. 245, 264-265, that Wisconsin could regulate the conduct there involved because

> recurrent or intermittent unannounced stoppage of work to win unstated ends was neither forbidden by federal statute nor was it legalized and approved thereby. Such being the case, the state police power was not superseded by congressional Act over a subject normally within its exclusive power and reachable by federal regulation only because of its effects on that interstate commerce which Congress may regulate.[8]

Moreover, even in those areas where Congress has asserted its paramount authority, Congress has made it clear that in certain instances the states may act—for example, with respect to breaches of the peace (*Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740), or with respect to violations

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[8] This Court found additional support for its holding in the proposition that the federal Act empowered the Board to forbid a strike because its "purpose" was illegal, but not because its "method" was illegal (at pp. 253, 263). However, it may be noted that Section 8(b)(1) of the Act does empower the Board to forbid strike activity by labor organizations which restrains or coerces employees in the exercise of the rights guaranteed by Section 7 of the Act. See, for example, *International Rice Milling Co., Inc.* v. *National Labor Relations Board*, 341 U.S. 665, 672, n. 5; *United Construction Workers* v. *Laburnum Corp.*, 347 U.S. 656, 668-669, *National Labor Relations Board* v. *United Mine Workers*, 202 F. 2d 177 (C.A. 3), and cases cited; *National Maritime Union of America*, 78 NLRB 971, 982-986.

of state restrictions on union-security arrangements more rigid than those contained in the federal Act (*Algoma Plywood & Veneer Co.* v. *Wisconsin Board*, 336 U. S. 301), or where similarity of statute and interpretation would enable the National Board to cede jurisdiction to a state agency (Section 10(a) of the Act).

The most recent pronouncement of this Court in the field of federal-state jurisdiction over labor controversies is *United Construction Workers* v. *Laburnum Corp.*, 347 U. S. 656. The nub of this decision is that the state may act where the essence of its action is not the regulation of labor relations matters which fall within the Congressional purview, but merely the protection of a legitimate state interest. *Laburnum*, however, in no way alters the principle established in *Garner* six months earlier, that a state may not "impinge on the area of labor combat" which the federal authority "designed to be free" (346 U. S., at 500). *Laburnum* held merely that the federal Act does not bar a state court from awarding damages in tort for violent activities of a labor organization which, although they constituted unfair labor practices under the federal Act, are also a common law tort. Support for this conclusion was found in the familiar principle that the Congressional intent in this regard was controlling. The Court stressed the legislative history of Section 8(b)(1)(A) of the Act to the effect that federal regulation of violence in labor disputes should not preclude concurrent exercise of local

police power over such violence merely because it occurred in a context of labor relations affecting interstate commerce (at pp. 668-669). Cf. *Allen-Bradley Local* v. *Wisconsin Board, supra.*

Moreover, the Court in *Laburnum* drew a distinction between a state court suit "enjoining future unfair labor practices" (p. 663) and one "dealing [by way of damages] with the consequences of tortious conduct already committed" (at p. 665). Pointing out that the Act's procedures are basically "preventive", providing "no general compensatory procedure except in * * * minor supplementary ways * * * " (*ibid.*), the Court concluded that a state remedy for damages would not necessarily result in the conflict of remedies *Garner* sought to avoid. On the other hand, the Court reiterated that where, as in *Garner* (and here), the state court is asked to enjoin practices which may be violations of the federal Act, it is without power to take such action because there is then a real likelihood of "colliding with the Board" (p. 663).[9]

Applying the foregoing principles to the instant case, we come to the conclusion that Congress has taken in hand this particular type of controversy so as to preclude state action. And this federal preemption, we submit, can be neither al-

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[9] For two recent cases reflecting somewhat divergent interpretations of *Laburnum*, see *Mahoney* v. *Sailors' Union*, 35 LRRM 2111 (Wash. Sup. Ct., Oct. 25, 1954), and *Benjamin* v. *Foidl*, 35 LRRM 2107 (Pa. Sup. Ct., Nov. 15, 1954).

tered nor avoided by characterizing the forbidden state regulation of the same controversy or relationship as being concerned with a "restraint of trade" rather than labor relations.

B. Congress "has taken in hand" jurisdictional disputes, thus occupying this area and excluding both concurrent and conflicting state regulation

In *Auto Workers* v. *O'Brien*, 339 U. S. 454, 456-457, this Court, holding that a strike vote provision of a Michigan statute was an unconstitutional invasion of a federally preempted area, declared:

> Congress has not been silent on the subject of strikes in interstate commerce. In the National Labor Relations Act * * * as amended by the Labor Management Relations Act, 1947 * * * Congress safeguarded the exercise by employees of "concerted activities" and expressly recognized the right to strike. It qualified and regulated that right in the 1947 Act. * * * None of these sections can be read as permitting concurrent state regulation of peaceful strikes for higher wages. Congress occupied this field and closed it to state regulation.

It is equally clear that Congress has not been silent on the subject of so-called jurisdictional and monopolistic strikes in interstate commerce; and, under the decisions of the Court, Congress also

"occupied this field and closed it to state regulation." Cf. *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, 387.

In its deliberations prior to the enactment in 1947 of the amended Act, Congress was deeply concerned with the obstructions to commerce created by "jurisdictional" and "monopolistic" strikes, and considered various proposals designed to remedy the situation. Indeed, there was much discussion of the precise dispute which underlies the instant case as a typical example of the activity Congress desired to regulate.[10] Accordingly, Section 12 of H. R. 3020, as it passed the House, designated as unlawful concerted activity "any sympathy strike, jurisdictional strike, monopolistic strike, or illegal boycott * * *." Rounding out the picture, Section 2(14) of the bill defined the term "illegal boycott" to include a concerted refusal by employees, or a threat thereof, "to render services where an object

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[10] The basic dispute which underlies the instant controversy gave rise to *United States* v. *Hutcheson*, 312 U.S. 219, a landmark case in this field. That case was repeatedly mentioned in the course of the Senate and House debates. 93 Cong. Rec. 3227-3228, 3652, 4197, 4837-4838. Like the instant case, *Hutcheson* involved a controversy between the Machinists and the Carpenters over the assignment of certain jobs by Anheuser-Busch, Inc., respondent herein. There, Anheuser-Busch had contracted with a third party for the erection of an additional facility, and the Carpenters demanded that certain jobs connected with this project be assigned to adherents of the Carpenters rather than to adherents of the Machinists. Rejection by Anheuser-Busch of these demands resulted in a strike and picketing by the Carpenters and an appeal to union members and their friends to refrain from buying Anheuser-Busch beer.

of the refusal or threat is to force a person to do business or to cease doing business with another person"; Section 2(15) of the bill defined the term "jurisdictional strike" to include a strike against an employer, "an object of which is to require that particular work be assigned to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class." Finally, Section 301 of the bill rendered such illegal boycotts and jurisdictional strikes subject to the Sherman Act.

The legislative history of the House proposals confirms the conclusion which was plain enough from the text of the House bill—that concerted activity of the kind here in issue was to be outlawed.[11] See House Report No. 245, 80th Cong., 1st Sess., pp. 22-24. This Report said (at p. 24):

> Illegal boycotts [outlawed under Section 12] take many forms. Often they are to compel employers to force their employees into unions or to give a union control over them as their bargaining agent in violation of the Labor Act itself. *Sometimes they are direct restraints of trade, designed to compel people against whom*

[11] Petitioners' conduct would also have been deprived of protection under the House bill (Sections 7, 8(b)(3), 2(11)) inasmuch as it constituted an effort to obtain agreement to a provision which was not a permissible subject of collective bargaining. Section 2(11) defined the proper subjects of collective bargaining, and concerted activities to obtain any benefits outside that area were declared to be unfair labor practices. These provisions were rejected in the law as enacted.

they are engaged in to place their business with some other than those they are dealing with at the time, or vice versa. * * *

Jurisdictional strikes usually involve quarrels, not between employers and employees, but between rival unions, which use the strike weapon against each other, and they partake of the nature of some forms of illegal boycotts. * * * [Emphasis added.]

See also pp. 31, 44, 45, and the comments of the Minority, pp. 71, 95-96. In addition to empowering the Federal Government to institute proceedings directed toward the elimination of illegal boycotts and jurisdictional disputes, the House bill would also have made such activity subject to injunctive proceedings at the instance of private parties injured thereby. H. R. 3020, Sec. 12(*c*); H. Rep. No. 245, 80th Cong., 1st Sess., p. 44.

The bill reported to the Senate by its Labor Committee contained provisions with respect to jurisdictional and boycott strikes analogous to those in the House bill. Section 8(b)(4)(1), (2) and (4) of S. 1126. However, Senator Ball, dissatisfied with the provisions of the Senate bill, which merely denominated such activities as unfair labor practices and provided for injunctive relief only at the request of the Board, proposed an amendment which not only would have subjected jurisdictional and boycott strike activity to the federal anti-trust laws but would also have authorized private parties to petition for injunctive relief. Sen. Rep. No. 105,

80th Cong., 1st Sess., Supplemental Views, pp. 54-56; 93 Cong. Rec. 4757, 4837-4847. The Ball amendment was long and thoroughly debated (93 Cong. Rec. 1824-1827, 1846, 3798, 3838, 4132-4133, 4439, 4757, 4837-4847, 4905). Acceptance or rejection of the proposed amendment turned essentially on a choice "between a procedure which would throw the issue into our common law courts, and a procedure which would throw the issue into the field of administrative law" (93 Cong. Rec. 4132).[12] The advocates of the Ball amendment stressed the desirability of allowing parties injured by boycotts and jurisdictional disputes to initiate their own suits, to control their own litigation, and to select their own courts rather than to petition a federal administrative agency with complete control over this process (93 Cong. Rec. 4837). The opponents, on the other hand, agreeing that this would be the impact of the amendment, emphasized that this could lead only to a resurgence of the very evils which the Norris-LaGuardia Act, as interpreted by this

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[12] In the course of the Senate debates on this issue, Senator Morse concluded a portion of his comments on this issue with the statement: "Does the Senator [Ellender] agree with me that we must make clear to the Senate that the choice which must be made is whether we are going to try to do this [*i.e.*, eliminate jurisdictional disputes and "illegal boycotts"] by way of an administrative law approach, or by way of a so-called court approach?" Senator Ellender, who was a member of the Senate Committee which had considered the proposed amendments to the Act, replied: "That seems to present the whole issue, I will say to the Senator" (93 Cong. Rec. 4132).

Court in the *Hutcheson* and related cases, was designed to eliminate (93 Cong. Rec. 4439).[13]

The upshot of this long debate was that the Ball amendment was rejected (93 Cong. Rec. 4847). Thereupon, the late Senator Taft, originally in favor of the Ball amendment but later persuaded that the "temper of the Senate" was opposed "to restoring the injunctive process even in cases of secondary boycotts and jurisdictional strikes" (93 Cong. Rec. 4843-4844), offered an amendment which provided merely for damage actions by injured parties in the federal district courts (93 Cong. Rec. 4858). Assured by Senator Taft that his amendment in no way invoked application of conspiracy or anti-trust statutes, the Senate adopted his amendment, which was later incorporated in the amended Act as Section 303 (93 Cong. Rec. 4858-4860, 4874-4875).

In the law as finally enacted, Section 8(b)(4)(D), the statutory provision invoked by respondent when it filed charges against petitioners before the Board (and invoked also by respondent before the Missouri courts), provides that it shall be an unfair labor practice for a labor organization or its agents to engage in, or to induce or encourage, a strike where an object thereof is "forcing or requiring any employer to assign particular work to employees in a particular labor organization or in

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[13] Senator Ball conceded that his amendment was designed to "correct" or "overrule" the interpretation of the Norris-LaGuardia and Clayton Acts made by this Court in the *Hutcheson* case and a number of other cases (93 Cong. Rec. 4838).

a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class * * *." The law further provides in Section 10(k) that whenever an unfair labor practice under Section 8(b)(4)(D) is charged, the Board is "empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen." (Following a hearing under this provision, the Board in the instant case determined only that no "dispute" existed within the meaning of Sections 8(b)(4)(D) and 10(k) of the Act.)

Under Section 8(b)(4)(A) and (B) of the Act, which respondent also invoked in its complaint in the state court, labor organizations are enjoined from (1) engaging in strike or picketing activity with an object of forcing any employer to cease doing business with any other person or (2) engaging in such activity against an employer with an object of forcing or requiring any other employer to recognize as the bargaining representative of his employees a union not certified by the Board as their bargaining representative. Section 10(l) of the Act directs and empowers the Board exclusively to petition for injunctive relief where, upon appropriate charges, the Board finds that there is reasonable cause to believe that a union is engaging in conduct proscribed by the various subsections of Section 8(b)(4). And, finally, as already stated, Section 303 grants to anyone injured by the unfair labor practices proscribed by Section 8(b)(4) the

right to sue for damages in the federal district courts.

Summarizing, then, Congress in the law as finally enacted rejected the sweeping provisions of the House bill and the Ball amendment. Instead of cataloguing, as did the House, a long and comprehensive list of "unlawful concerted activities" and subjecting those activities to the Sherman Act, Congress merely defined in Section 8(b)(4) a limited number of unlawful objectives and made it an unfair labor practice for a labor organization to strike, or to induce or encourage a strike, for these objectives. And instead of opening the courts generally to private petitions for injunctive relief in such situations, Congress designated the Board as the only agency entitled to obtain such relief. The only concession made to private parties in this regard was to afford them access to the federal district courts for the sole purpose of maintaining damage suits. This result reflects a deliberate and detailed determination of the extent to which activities of the kind involved in the instant case should be restricted and the extent to which they should be free of restriction. In the Conference Report which reconciled the conflicting versions of the House and Senate bills (H. Conf. Rep. No. 510, 80th Cong., 1st Sess., pp. 43-44), the several proposals were considered, changes were made to incorporate some of the proposals, and other proposals were rejected. The law, as finally enacted, thus represents the considered judgment of Congress as to the scope of the

regulation which the Federal Government chose to impose. And Congress, explicitly rejecting alternative proposals, chose to entrust the implementation of this regulatory scheme to exclusive administration by a single federal agency, the National Labor Relations Board.

In view of the comprehensive consideration accorded so-called jurisdictional and monopolistic strikes and the precise statutory formulation of both the substantive rights and procedural rules governing such disputes, it seems clear under the controlling decisions of this Court that Congress has occupied this field. By the same token, these decisions establish that Congress has precluded the states from applying more stringent or different sanctions than Congress itself applied or refrained from applying in fashioning the national labor policy. Here, as in *Garner*, "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure * * *. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." (346 U.S., at 490.)

As we read the controlling pronouncements of

this Court in related cases, insofar as Congress in the federal Act proscribed the type of union conduct here involved, whether under the provisions of Section 8(b)(4)(D), 8(b)(4)(A) or (B), or any other relevant provision of the Act,[14] the states are precluded from imposing different or even parallel restrictions. Correspondingly, if it should appear that the particular conduct is of a kind which Congress deliberately chose not to enjoin, then the states are not permitted by their action to frustrate the federal objective. As in *Garner* (pp. 499-500):

> The detailed prescription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint. For the policy of the national Labor Management Relations Act is not to condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use

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[14] The Missouri court found (*supra*, p. 6) that the basic purpose of petitioner's picketing was to compel the employees of various contractors "to forego representation by their present bargaining agent, the Millwrights' Union, with whom the said construction contractors now have valid collective bargaining agreements, and become affiliated with the Machinists' Union in order to retain their employment with such contractors or lose their opportunity for periodic employment at that work; * * *." Such a finding, if made by the Board in appropriate proceedings before it, might constitute a violation of Section 8(b)(2) of the Act. That section makes it an unfair labor practice for a union to cause or attempt to cause an employer to discriminate against employees by reason of their union membership.

> the weapon of picketing. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits.

In the instant case, the Board, exercising the "prescribed processes," concluded that petitioners' conduct, as manifested in the record before it, did not fall within the prohibition of Section 8(b)(4)(D). Whether the same processes would result in a finding of a violation of Section 8(b)(4)(A) or (B) or of Section 8(b)(2) does not appear, nor is it material. For, contrary to the view of the Missouri court, whether the Board would or would not find the picketing in issue to constitute an unfair labor practice is not the controlling factor. This Court long ago noted in *Bethlehem Steel Co.* v. *New York Board,* 330 U.S. 767, 775, that "the power to decide a matter can hardly be made dependent on the way it is decided." Here, as in *Garner,* "It is not necessary or appropriate for us to surmise how the National Labor Relations Board might have decided this controversy" (p. 489), and the obvious alternatives envisaged by the Court that the Board might either "find a violation * * * [and] issue a cease-and-desist order" or "dismiss the complaint, thereby sanctioning the picketing" (p. 499) in no way deterred this Court from invalidating state action with respect to the controversy there

involved.[15] As in *Garner,* the significant factor here is that the picketing falls within the "area of labor combat" which the Act regulates. Under the statutory scheme, therefore, as the decisions of this Court make clear, the Board is the sole agency entitled to determine whether the picketing is within the prohibition of the Act or whether the "public interest is served by freedom of [petitioners] to use the weapon of picketing" (346 U.S., at 500). And when Missouri by its action in the instant case impinged on this area, it necessarily obstructed federal policy, and its action cannot stand.

It remains only to note on this phase of the case that this is not a situation where the Board, vested

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[15] The Missouri court also found that no labor dispute existed in the instant case and that the Board had so found. The court misread the Board decision. All that the Board could and did find in this regard was that "no 'dispute' [occurred] within the meaning of Sections 8(b)(4)(D) and 10(k)" in that the facts in the record before it did not reveal "a *present* demand for the assignment of work such as is contemplated by Section 8(b)(4)(D)" (101 NLRB 346, 350-352). This, of course, cannot be equated with a finding that no "labor dispute" existed. The amended Act, like its predecessor, defines a labor dispute as including "any controversy concerning terms, tenure or conditions of employment, * * * negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee" (Sec. 2(9) of the Act). Under this broad definition, the argument that no labor dispute existed here is plainly erroneous. Indeed, when a similar contention was urged before this Court in *Allen-Bradley Co.* v. *Electrical Workers,* 325 U.S. 797, this Court summarily rejected the contention as "untenable" (p. 807, n. 12). See also, *Yoerg Brewing Company* v. *Brennan,* 59 F. Supp. 625 (D. Minn.), collecting prior cases on this issue.

with jurisdiction under the Act, declines for budgetary or other administrative considerations to assert its jurisdiction and consider the controversy.[16] See *Garner*, 346 U.S. at 488. On the contrary, here the Board did assert jurisdiction, considered the merits of the controversy, and concluded that the picketing did not constitute a violation of Section 8(b)(4)(D). Assuming no other provision of the Act were applicable, the Board here declared the Congressional intent as surely as it would have done so had it determined that the conduct fell under the statutory ban. Missouri could no more rightfully enjoin conduct which the federal authority designed to be free than it could permit conduct which the federal authority enjoined. See *Garner*, at p. 501.

C. The state's restraint-of-trade laws cannot justify state regulation of the area preempted by the federal Act

If our analysis preceding this point is correct, the decision below must be reversed on the ground that Missouri's injunction invades an area preempted by Congress. It makes no difference how the state court characterizes its action—whether it be called state control of "labor relations," as in

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[16] This case does not require a determination as to the power of a state to act under such circumstances. The Board has not formally decided or otherwise taken a position on this question in any case or litigation in which it has been involved. It has, however, as a matter of practice, repeatedly refrained from intervening in any way in situations where the states have taken action with respect to industries over which the Board as a matter of policy declines to take jurisdiction.

Garner, or of trade restraints, as here. The court below held, however, that the state injunction was proper because (1) the case involved no "labor dispute" or "unfair labor practice," and (2) Missouri here was regulating a restraint of trade, not labor relations. We submit that the court erred on both grounds.

1. The assumption of the court below that the absence of a labor dispute or of an unfair labor practice *per se* removes the bar to state action is wholly without warrant. It may be noted that, as we have indicated (*supra*, n. 15, p. 29), the court was undoubtedly mistaken in its view (R. 117) that "A jurisdictional quarrel between two rival unions is not a labor dispute within the Norris-LaGuardia Act, the Wagner Act, or the Taft-Hartley Act." The shortest answer to the position of the court below is simply that a "labor dispute" does in fact exist here. Petitioners' strike and picket line to enforce a contract demand are classic ingredients of a "labor dispute" in terms of controlling federal law. *Allen-Bradley Co.* v. *Electrical Workers, supra; Mead, Inc.* v. *Teamsters Union*, 35 LRRM 2148 (C.A. 1, November 18, 1954).

But whether or not the conduct in question be deemed a labor dispute is, after all, of no consequence. For there is no requirement in the federal Act making the existence of a labor dispute a prerequisite to the Act's application. The Board has two primary functions, to conduct representation

proceedings and to adjudicate unfair labor practice cases. The sole prerequisite for invoking the former procedure is the filing of a petition asserting that a question concerning the representation of employees exists (Section 9(c) of the Act); the sole prerequisite for invoking the latter procedure is the filing of a charge alleging that an unfair labor practice (listed in Section 8) has occurred (Section 10(b) of the Act). In neither case is the allegation or existence of a labor dispute required to invoke the Board's jurisdiction.

Likewise, the existence or non-existence of an unfair labor practice is not the criterion by which the state's power can be determined. As has already been demonstrated, what is critical is not whether particular conduct constitutes an unfair labor practice, but whether Congress has occupied the area in which that conduct falls. The Board, exercising its exclusive jurisdiction, may find an unfair labor practice or may find that the disputed conduct falls within the area Congress chose not to restrict. The decisive point in either event is that the Board, and not state courts, is the agency authorized to make the determination.

2. There remains the view of the Missouri court that since the purpose and effect of its action is not to regulate labor relations but merely to regulate trade practices, its power in this field is paramount.[17] We believe that Missouri incorrectly as-

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[17] Our reading of the court's opinion suggests that the controlling considerations impelling the court action were con-

says its authority in this field. The constitutional authority of the state to regulate trade within its borders is, of course, firmly established. *Watson* v. *Buck*, 313 U.S. 387, 403-404. And *Giboney* v. *Empire Storage & Ice Company*, 336 U.S. 490, affirms the authority of the state to apply its trade regulation laws to union activity. But the propriety of Missouri's action here turns not on the validity of its restraint of trade legislation, nor even on the validity or constitutionality of the application of that legislation to union activity. The test, rather, is whether the particular state action, otherwise valid, has been superseded by federal authority or whether, as the Missouri court held, the state authority is paramount.

The Missouri court places its reliance on the *Giboney* case. In that case, the questions raised concerned the constitutional power of Missouri to apply its trade restraint law to labor union activities, and to enjoin union members from peaceful picketing carried on as an essential and inseparable part of a course of conduct which was in violation of the state law (336 U.S. at 491-492). This Court held (1) that states have constitutional power to prohibit competing dealers and their aiders and abettors from combining to restrain freedom of trade; (2) that such restraint of trade laws can be consti-

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siderations of labor relations policy, and not those of trade regulation. See discussion *infra*, pp. 38-39. However, for purposes of the present discussion, we assume that the court was merely regulating trade practices.

tutionally applied to labor unions; and (3) that an injunction against picketing issued pursuant to such law did not on the facts presented constitute an unconstitutional abridgement of free speech (pp. 495-504). However, this Court did not in *Giboney* pass on the question of federal supersedure.[18] Hence, the suggestion of the Missouri court (R. 114-115) that the *Giboney* holding of "paramount" authority in the state encompassed the Labor Management Relations Act is without real foundation.[19] The *Giboney* opinion makes it clear that this Court's holding that "the state's power to govern in this field is paramount" was addressed specifically to "the basic issue * * * whether Missouri or a labor union has paramount constitutional power to regulate and govern the manner in which certain trade practices shall be carried on in Kansas City, Missouri" (336 U.S. at 504).

Thus, neither the *Giboney* case nor any other authority empowers a state, acting under local restraint of trade laws, to regulate conventional union activities in an area which the federal Act has undertaken to regulate. It has frequently been noted

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[18] So far as appears, the ice company involved in *Giboney* was a purely local enterprise not engaged in interstate commerce within the meaning of the federal Act; hence that Act would not be applicable. In any event, there is no indication that this issue was raised or argued, and, quite clearly, it was not adjudicated.

[19] The Missouri court predicated this suggestion wholly on the circumstance that the decision in *Giboney* was handed down nearly two years after the effective date of the Labor Management Relations Act (R. 115).

that every strike, whether its object is spreading union organization or achieving economic demands, results in some restraint of trade. Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1329. Cf. *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469, 513. On this theory, states presumably could, merely by affixing an anti-trust label to their actions, exercise concurrent jurisdiction over any labor controversy affecting interstate commerce within any area over which the states have "traditionally exercised control" (R. 118). Application of such a principle would seem to require, for example, a reversal of the result reached in *Bus Employees* v. *Wisconsin Board*, 340 U.S. 383, in which this Court barred Wisconsin from curtailing the right to strike in public utilities. Certainly, the power of Wisconsin to protect the life, health, and welfare of its inhabitants by forbidding interruption to essential services is no less than the right of Missouri to protect the welfare of its citizens from what it regards as undesirable trade practices.[20]

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[20] It should be noted that the practice of including clauses in collective bargaining agreements governing the subcontracting of work by an employer are by no means uncommon, and that clauses precisely like the one giving rise to the controversy in the instant case have been included in such agreements. See *Collective Bargaining Negotiations and Contracts:* Basic Patterns in Collective Bargaining Contracts (The Bureau of National Affairs, Inc., Washington, D. C.) p. 15:253, leaf dated 11-20-53; Chamberlain, *The Union Challenge to Management Control* (Harper & Brothers, New York, 1948), pp. 82, 317. The obvious motivation of the unions seeking the inclusion of such provisions is to protect their union wages, working standards, and security in employment.

The *Bus Employees* case demonstrates, however, that although the state control might otherwise be perfectly legitimate, the paramount federal commerce power prevails wherever Congress has chosen to exercise that power and has intended to leave no scope for state action. The point is equally well illustrated by the *Garner* decision, which, in our view, controls here. And see *Direct Transit Lines v. Teamsters Union*, 29 L.R.R.M. 2492 (W.D. Mich., February 5, 1952). In *Garner*, Pennsylvania could, with as much justification as Missouri here, have applied common or statutory restraint of trade law to the controversy before it and on that ground enjoined the conduct there involved. There is no basis for supposing that the label proposed to be affixed to the state's regulation could have affected the conclusion of Pennsylvania's Supreme Court and this Court that Congress had precluded such regulation.

As we have already demonstrated (*supra*, pp. 18-26), Congress was aware of jurisdictional disputes and debated various methods of dealing with them. Congress was also aware that such disputes were sometimes "direct restraints of trade, designed to compel people against whom they are engaged in to place their business with some other than those they are dealing with it at the time" (H. Rep. No. 245, p. 24). To the extent Congress desired to do so, it enacted statutory provisions designed to remedy these evils (Section 8(b)(4), 10(k), 10(l), 303). But Congress could have done what the House bill and the Ball amendment (*supra*, p. 21) proposed—namely, not only outlaw

such restraints generally but make them subject to the Sherman Act either by government suit or by individual suit. H. R. 3020 as it passed the House, Sec. 301(b).[21] However, Congress deliberately chose to limit the relief granted to that set forth in the Act, and deliberately chose to eschew the more drastic remedies. In the face of this deliberate refusal to enact a federal curtailment of this drastic nature in labor-management relations affecting interstate commerce, it would scarcely be in keeping with the federal regulatory scheme to permit the states to do so.[22] Cf. *Castle* v. *Hayes*

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[21] The House bill provided as follows:

> Section 6 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended, is amended by inserting before the period at the end thereof a colon and the following: "*Provided, however,* That it shall not be within the legitimate objects of labor organizations or the officers, representatives, or members thereof, to make any contract, or to engage in any combination or conspiracy, in restraint of commerce, if one of the purposes or a necessary effect of such contract, combination, or conspiracy is to join or combine with any person to fix prices, allocate customers, restrict production, distribution, or competition, or impose restrictions or conditions, upon the purchase, sale, or use of any product, material, machine, or equipment, or to engage in any concerted activity declared to be unlawful under section 12 of the National Labor Relations Act, as amended."

[22] Compare *Auto Workers* v. *Wisconsin Board*, 336 U. S., at 257-258: "The most effective legal weapon against the struggling labor union was the doctrine that concerted activities were conspiracies, and for that reason illegal. Section 7 of the National Labor Relations Act took this conspiracy weapon away from the employer in employment relations which affect interstate commerce. No longer can any state, as to relations within reach of the Act, treat otherwise lawful

Freight Lines, Inc., No. 44 this Term, decided December 6, 1954.

This is not to say, of course, that the federal Act precludes the states from regulating any type of union activity under state restraint-of-trade laws. See Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1329-32. Thus, where, for example, union and employer groups combine for the purpose of restraining free competition or setting prices above a competitive level (see *Allen-Bradley Co.* v. *Electrical Workers*, 325 U.S. 797) it can reasonably be argued that the state can act, since the conventional labor activity aspect of the conduct is purely secondary. In such a case the state would not directly intrude upon the field of labor management relations preempted by Congress. Cf. the *Laburnum* case, 347 U. S. 656. But this is not so where the restraint of trade is merely an incidental consequence of conventional union activities for conventional union objectives, as is the case here. See *supra*, p. 35, n. 20.

It should be observed, finally, that analysis of the Missouri Supreme Court's opinion in the instant case reveals that what that court was regulating is probably more accurately described as "labor relations" than as "restraint of trade." The source of the evil in the court's view was that (R. 108-109):

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activities to aid unionization as an illegal conspiracy merely because they are undertaken by many persons acting in concert."

> under the terms [of the contract] sought to be imposed by the Union, persons employed by or seeking to work for the above construction contractors in moving, erecting, or installing machinery in St. Louis area breweries would be compelled to forego representation by their present bargaining agent, the Millwrights' Union, with whom the said construction contractors now have valid collective bargaining agreements, and become affiliated with the Machinists' Union in order to retain their employment * * *.

It was this conduct which the court denominated a conspiracy in restraint of trade in violation of its common and statutory law (R. 109, 111). On the other hand, this, as the legislative history of the amended Act shows (*supra*, pp. 18-30), was precisely the type of conduct which Congress considered and chose to regulate only in the manner prescribed in the federal Act.[23] It would appear, therefore, that Congress has occupied the field in which this case falls so as to preclude state action.

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[23] We do not intend to suggest here that the state action falls because the language of its opinion manifests that it was regulating labor relations and not restraint of trade. It is not the language but the situation which is the criterion. The opinion in the instant case merely reflects the actual situation.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court below should be reversed.

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DECEMBER, 1954

APPENDIX

The relevant provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., 141, *et seq.*), are as follows:

DEFINITIONS

Sec. 2. When used in this Act—

* * * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * * * *

UNFAIR LABOR PRACTICES

Sec. 8. * * *

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle

or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

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REPRESENTATIVES AND ELECTIONS

SEC. 9. * * *

* * * * *

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a); the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a

question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: * * *

* * * * *

(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of

section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for

appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to

the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

* * * * *

Title III

Suits By And Against Labor Organizations

* * * * *

Boycotts and Other Unlawful Combinations

Sec. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor

organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

* * * * *

The relevant provisions of Chapter 416 of the Revised Statutes of Missouri are as follows:

Chapter 416: Monopolies, Discriminations and Conspiracies.

Section 416.010. *Combination in restraint of trade declared a conspiracy:*

Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any person or persons in restraint of trade or competition in the importation, transportation, manufacture, purchase or sale of any product or commodity in this state, or any article or thing bought or sold whatsoever, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and shall be punished as provided in sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400.

* * * * *

Section 416.050. *Penalties:*

Any person violating any of the provisions of sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400 or who shall do any act prohibited or declared unlawful by the provisions of said sections, shall be adjudged guilty of a felony, * * *.

* * * * *

Section 416.070. *Offending corporations to forfeit charter and property:*

Any corporation * * * which shall violate any of the provisions of sections 416.010 to 416.100, * * * may * * * be declared by the court to have forfeited its corporate rights and franchises * * *; and such court may, by such judgment and decree, also declare all or any part of the property of such corporation forfeited unto the state, or * * * assess against it a fine. * * *

* * * * *

Section 416.090. *Persons injured to recover triple damages:*

Any person injured in his business or property by any other person or persons by reason of anything forbidden or declared to be unlawful by sections 416.010 to 416.100 * * * shall recover threefold the damages by him sustained, and the costs of the suit, including a reasonable attorney's fee.

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